

SUBCHAPTER B—COOPERATIVE CONTROL AND ERADICATION OF LIVESTOCK OR POULTRY DISEASES

PART 49—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

Subpart A—General

Sec.

49.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

49.10 Stipulations.

AUTHORITY: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 48 FR 30094, June 30, 1983, unless otherwise noted.

Subpart A—General

§49.1 Scope and applicability of rules of practice.

The Uniform Rules of Practice for the Department of Agriculture promulgated in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicatory, administrative proceedings under the following statutory provisions:

Act of May 29, 1884, commonly known as the Animal Industry Act, section 7, as amended (21 U.S.C. 117),

Act of February 2, 1903, commonly known as the Cattle Contagious Diseases Act of 1903, section 3, as amended (21 U.S.C. 122),

Act of March 3, 1905, Section 6, as amended (21 U.S.C. 127),

Act of July 2, 1962, section 6(a), as amended (21 U.S.C. 134e).

The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)

In addition, the Supplemental Rules of Practice set forth in subpart B of this part shall be applicable to such proceedings.

[48 FR 30094, June 30, 1983, as amended at 68 FR 6342, Feb. 7, 2003]

Subpart B—Supplemental Rules of Practice

§49.10 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under any of the Acts listed in §49.1, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administrator or the Administrator's delegate gives notice of an apparent violation of the applicable Act, or the regulations issued thereunder, by such person and affords such person an opportunity for a hearing regarding the matter as provided by such Act;

(2) Such person expressly waives hearing and agrees to pay a specified penalty within a designated time; and

(3) The Administrator agrees to accept the penalty in settlement of the particular matter involved if the penalty is paid within the designated time.

(b) If the penalty is not paid within the time designated in such a stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

Sec.

50.1 Definitions.

Subpart A—General Indemnity

50.2 Applicability of this subpart; cooperation with States.

50.3 Payment to owners for animals destroyed.

50.4 Classification of cattle, bison, captive cervids, and other livestock as infected, exposed, or suspect.

50.5 Record of tests.

50.6 Identification of animals to be destroyed because of tuberculosis.

50.7 Destruction of animals.

50.8 Payment of expenses for transporting and disposing of infected, exposed, and suspect animals.

50.9 Appraisals.

50.10 Report of appraisals.

§ 50.1

9 CFR Ch. I (1–1–04 Edition)

- 50.11 Report of salvage proceeds.
- 50.12 Claims for indemnity.
- 50.13 Disinfection of premises, conveyances, and materials.
- 50.14 Claims not allowed.
- 50.15–50.16 [Reserved]

Subpart B—Dairy Cattle and Facilities in the El Paso, Texas, Region

- 50.17 Payment.
- 50.18 Identification and disposal of cattle.
- 50.19 Report of salvage proceeds.
- 50.20 Claims for payment.
- 50.21 Schedule of payments.
- 50.22 Claims not allowed.

AUTHORITY: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 40 FR 27009, June 26, 1975, unless otherwise noted.

§ 50.1 Definitions.

For the purposes of this part, the following terms mean:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

APHIS representative. A veterinarian or other person employed by APHIS in animal health activities, who is authorized to perform the function involved.

Approved herd plan. A herd management and testing plan based on the disease history and movement patterns of an individual herd, designed by the herd owner and a State representative or APHIS representative to determine the disease status of livestock in the herd and to eradicate tuberculosis within the herd. The plan must be jointly approved by the State animal health official and the Veterinarian in Charge.

Captive cervid. All species of deer, elk, moose, and all other members of the

family Cervidae raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition, including time such animals are moved interstate; or any wild cervid that is moved interstate, during the period of time from capture until release into the wild. A captive cervid that escapes will continue to be considered a captive cervid as long as it bears an official eartag or other identification approved by the Administrator as unique and traceable with which to trace the animal back to its herd of origin.

Department. The United States Department of Agriculture.

Designated tuberculosis epidemiologist (DTE). A State or Federal epidemiologist designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis affected herds. A DTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of animals and herds, assist in the development of individual herd plans, and coordinate disease surveillance and eradication programs within the geographic area of the DTE's responsibility.

Destroyed. Condemned under State authority and destroyed by slaughter or by death otherwise.

Heifer. A female dairy cow that has not given birth.

Herd. Except for livestock assembled at feedlots, any group of livestock maintained for at least 4 months on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator.

Herd depopulation. Removal by slaughter or other means of destruction of all cattle, bison, and captive cervids in a herd, as well as any other exposed livestock in the herd, prior to restocking with new livestock.

Livestock. Cattle, bison, captive cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production

of meat and other products, for sport, or for exhibition.

Milking cow. A female dairy cow that has given birth and is being used for milk production.

Mortgage. Any mortgage, lien or other security or interest that is recorded under State law or identified in the indemnity claim form filed under § 50.12 and held by any person other than the one claiming indemnity.

Net salvage. The amount received for animals destroyed because of tuberculosis, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner.

Owner. Any person who has a legal or rightful title to livestock whether or not they are subject to a mortgage.

Permit. A permit for movement of livestock directly to slaughter, listing the disease status and identification of the animal, where consigned, cleaning and disinfection requirements, and proof of slaughter certification.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or any organized group of any of the foregoing.

Quarantined feedlot. A confined area under the direct supervision and control of a State livestock official who shall establish procedures for the accounting of all livestock entering or leaving the area. The quarantined feedlot shall be maintained for finish feeding of livestock in drylot with no provision for pasturing and grazing. All livestock leaving such feedlot must only move directly to slaughter in accordance with established procedures for handling quarantined livestock.

Reactor cattle, bison, and captive cervids. Cattle, bison, and captive cervids are classified as reactors for tuberculosis in accordance with the "Uniform Methods and Rules Bovine Tuberculosis Eradication," based on a positive response to an official tuberculin test.

Registered livestock. Livestock for which individual records of ancestry are maintained, and for which individual registration certificates are issued and recorded by a recognized breed association whose purpose is the improvement of the breed.

State. Any State, territory, the District of Columbia, or Puerto Rico.

State animal health official. The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs in that State.

State representative. A veterinarian or other person who is employed in livestock sanitary work of a State or a political subdivision of a State and who is authorized by the State or political subdivision to perform the function involved under a memorandum of understanding with the Department.

Tuberculosis. The contagious, infectious, and communicable disease caused by *Mycobacterium bovis*.

Veterinarian in Charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform official animal health work of APHIS in the State concerned.

[40 FR 27009, June 26, 1975, as amended at 45 FR 32287, May 16, 1980; 51 FR 33735, Sept. 23, 1986; 52 FR 1317, Jan. 13, 1987; 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 58 FR 34698, June 29, 1993; 60 FR 37808, July 24, 1995; 63 FR 34263, June 24, 1998; 63 FR 72122, Dec. 31, 1998; 67 FR 7590, Feb. 20, 2002; 67 FR 48750, July 26, 2002]

Subpart A—General Indemnity

§ 50.2 Applicability of this subpart; cooperation with States.

(a) The provisions of this subpart apply to all payments made by the Department for the destruction of animals because of tuberculosis, except as specifically provided in subpart B of this part.

(b) The Administrator cooperates with the proper State authorities in the eradication of tuberculosis and pays Federal indemnities for the destruction of cattle, bison, captive cervids, or swine affected with or exposed to tuberculosis.

[67 FR 48751, July 26, 2002]

§ 50.3 Payment to owners for animals destroyed.

(a) The Administrator is authorized to agree on the part of the Department to pay indemnity to owners of the following animals:

§ 50.4

9 CFR Ch. I (1–1–04 Edition)

(1) Cattle, bison, or captive cervids destroyed because the animals are infected with or exposed to tuberculosis;

(2) Cattle, bison, or captive cervids that have been classified as suspect for tuberculosis, except that the payment of indemnity for the destruction of suspect cattle, bison, and captive cervids will be withheld until the tuberculosis status of the suspect animal has been determined and, if the cattle, bison, or captive cervid is found to be infected with tuberculosis, until all cattle, bison, and captive cervids 12 months of age or older in the claimant's herd have been tested for tuberculosis under APHIS or State supervision; and

(3) Other livestock destroyed because they are classified as exposed to tuberculosis by the designated tuberculosis epidemiologist by reason of an association with an affected herd of cattle, bison, or captive cervids.

(b) In each case, the joint State-Federal indemnity paid, together with the amount for net salvage the owner receives, may not exceed the appraised value of the animal, as determined in accordance with § 50.9. Additionally, the Department will in no case pay more than \$3,000 for an animal that is destroyed.

[67 FR 7591, Feb. 20, 2002]

§ 50.4 Classification of cattle, bison, captive cervids, and other livestock as infected, exposed, or suspect.

(a) Cattle, bison, and captive cervids are classified as infected with tuberculosis on the basis of an intradermal tuberculin test applied by a Federal, State, or an accredited veterinarian or by other diagnostic procedure approved in advance by the Administrator.

(b) Cattle, bison, and captive cervids are classified as exposed to tuberculosis when such cattle, bison, and captive cervids (1) are part of a known infected herd, or (2) are found to have moved from an infected herd before the time infection was disclosed in such herd and after the time such herd had apparently become infected, or (3) are found to have been exposed by virtue of nursing a reactor dam: *Provided*, That cattle, bison, and captive cervids classified as exposed to tuberculosis shall be removed direct to slaughter.

(c) Cattle and bison are classified as suspects for tuberculosis based on a positive response to an official tuberculin test, in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (incorporated into the regulations by reference in part 77). Captive cervids are classified as suspects for tuberculosis in the same manner as cattle and bison.

(d) The designated tuberculosis epidemiologist will determine whether livestock other than cattle, bison, or captive cervids are classified as exposed to tuberculosis by reason of association with an affected herd of cattle, bison, or captive cervids.

[40 FR 27009, June 26, 1975, as amended at 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998; 67 FR 7591, Feb. 20, 2002]

§ 50.5 Record of tests.

When any cattle, bison, or captive cervid in a herd is classified by an APHIS or State representative or accredited veterinarian as a reactor to a test for tuberculosis, a complete test record shall be made for such herd, including the reactor tag number of each reacting animal and the registration name and number of each reacting registered animal. VS Form 6-22 or an equivalent State form shall be used for the record of any herd having any reactor to a tuberculin test. A copy of the applicable test record shall be given to the owner of any such herd, and one copy of each such record shall be furnished to the appropriate State veterinarian's office.

[40 FR 27009, June 26, 1975, as amended at 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998]

§ 50.6 Identification of animals to be destroyed because of tuberculosis.

(a) Livestock to be destroyed because of tuberculosis must be identified as follows:

(1) Livestock classified as reactors for tuberculosis must be identified within 15 days after being classified as reactors, except that the veterinarian in charge may extend the time limit for identification to 30 days when he or

she receives a request for such an extension prior to the expiration date of the original 15-day period allowed and circumstances beyond the control of the owner warrant such an extension, and the Administrator may extend the time limit for identification beyond 30 days upon request in specific cases when circumstances beyond the control of the owner warrant such an extension.

(2) Livestock other than reactors for tuberculosis that are to be destroyed because of tuberculosis must be identified prior to movement from the premises of origin to the place of destruction.

(b) *Reactor cattle, bison, and captive cervids.* Reactor cattle, bison, and captive cervids must be identified by branding the letter "T," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor," or a similar State reactor tag. Reactor cattle, bison, and captive cervids may be moved interstate to slaughter without branding if they are permanently identified by the letters "TB" tattooed legibly in the left ear, they are sprayed on the left ear with yellow paint, and they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. The official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(c) *Exposed cattle, bison, and captive cervids.* Exposed cattle, bison, and captive cervids must be identified by branding the letter "S," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to either ear an approved metal eartag bearing a serial number. Exposed cattle, bison, and captive cervids may be moved interstate to slaughter without branding if they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. The official seals must be applied and removed by an APHIS representative, State representative, ac-

credited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(d) *Other exposed livestock.* Livestock other than cattle, bison, or captive cervids that are destroyed under the provisions of § 50.3 must be identified by tagging with a serially numbered metal eartag attached to either ear. All such animals to be destroyed must be transported to the place of destruction in vehicles closed with seals provided by APHIS or shall be accompanied to the place of destruction by an APHIS or State representative: *Provided, however,* that animals destroyed and disposed of under the direct supervision of an APHIS or State representative on the premises where they were exposed do not require individual identification.

[67 FR 7591, Feb. 20, 2002]

§ 50.7 Destruction of animals.

(a) *Slaughter or disposal.* Livestock to be destroyed because of tuberculosis must be shipped direct to slaughter under permit to a Federal or State inspected slaughtering establishment or be disposed of by rendering, burial, or incinerating in an approved manner under supervision of an APHIS or State employee.

(b) *Time limit for destruction of animals.* Livestock for which Federal indemnity may be paid because of tuberculosis must be destroyed and carcass disposal completed within 15 days after the date of appraisal, except that the appropriate Veterinarian in Charge, for reasons satisfactory to him, may extend the time limit for slaughter to 30 days when request for such extension is received by him prior to the expiration of the original 15-day period allowed, and the Administrator may extend the time limit for slaughter beyond 30 days, upon request in specific cases and for reasons satisfactory to him.

(Approved by the Office of Management and Budget under control number 0579-0051)

[40 FR 27009, June 26, 1975, as amended at 45 FR 32287, May 16, 1980; 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998; 67 FR 7591, Feb. 20, 2002]

§ 50.8

9 CFR Ch. I (1–1–04 Edition)

§ 50.8 Payment of expenses for transporting and disposing of infected, exposed, and suspect animals.

The Department may pay, when approved in advance in writing by the Veterinarian in Charge, one half the expenses of transporting infected, exposed, or suspect livestock to slaughter or to the point where disposal will take place, and one half the expenses of destroying, burying, incinerating, rendering, or otherwise disposing of infected, exposed, or suspect livestock; *Provided that*, the Department may pay more than one-half of the expenses when the Administrator determines that doing so will contribute to the tuberculosis eradication program. For reimbursement to be made, the owner of the animals must present the Veterinarian in Charge with a copy of either a receipt for expenses paid or a bill for services rendered. Any bill for services rendered by the owner must not be greater than the normal fee for similar services provided by a commercial hauler or renderer.

[62 FR 49592, Sept. 23, 1997; as amended at 63 FR 34264, June 24, 1998; 67 FR 7591, Feb. 20, 2002]

§ 50.9 Appraisals.

(a) Livestock to be destroyed because of tuberculosis under § 50.3 must be appraised within 15 days after being classified as infected with tuberculosis, except that the veterinarian in charge may extend the time limit for appraisal to 30 days when he or she receives a request for such an extension before the end of the expiration date of the original 15-day period allowed and circumstances beyond the control of the owner warrant such an extension, and the Administrator may extend the time limit for appraisal beyond 30 days upon request in specific cases when circumstances beyond the control of the owner warrant such an extension.

(b) Animals for which indemnity is to be paid under this part must be appraised at their fair market value by an appraiser selected by APHIS. APHIS may decline to accept any appraisal that appears to it to be unreasonable or out of proportion to the value of like animals of a like quality. Should the appraisal made by the appraiser selected by APHIS be deemed inadequate

by the owner of the animals, the owner will have 15 days from the receipt of the appraisal to submit to the Administrator a request for a review of the appraisal, along with the reasons why the animals should be appraised at a higher value. The decision by the Administrator regarding the value of the animals is final.

(c) When livestock to be destroyed because of tuberculosis are appraised, due consideration will be given to their breeding value as well as to their dairy or meat value. Livestock presented for payment as registered must be accompanied by their registration papers. If the registration papers are temporarily not available, or if the livestock are less than 3 years old and unregistered, the veterinarian in charge may grant a reasonable time for the presentation of their registration papers.

[67 FR 7591, Feb. 20, 2002]

§ 50.10 Report of appraisals.

Appraisals of livestock made in accordance with § 50.9 shall be recorded on forms furnished by APHIS. The appraisal form shall be signed by the appraiser and by the owner certifying his acceptance of the appraisal. The “date of appraisal” shall be the date that the owner signs the appraisal form. The original of the appraisal form and as many copies thereof as may be required for APHIS, the State, and the owner of the animals shall be sent to the appropriate Veterinarian in Charge.

[40 FR 27009, June 26, 1975, as amended at 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998; 67 FR 7592, Feb. 20, 2002]

§ 50.11 Report of salvage proceeds.

A report of the salvage derived from the sale of each animal on which a claim for indemnity may be made under the provisions of § 50.3 shall be made on a salvage form acceptable to APHIS which shall be signed by the purchaser or his agent or by the selling agent handling the animals. If the livestock are sold by the pound, the salvage form shall show the weight, price per pound, gross receipts, expenses if any, and net proceeds. If the livestock are not sold on a per pound basis, the net purchase price of each animal must

be stated on the salvage form and an explanation showing how the amount was arrived at must be submitted. In the event the animals are not disposed of through regular slaughterers or through selling agents, the owner shall furnish, in lieu of the salvage form, an affidavit showing the amount of salvage obtained by him and shall certify that such amount is all that he has received or will receive as salvage for said animals. In an emergency, a certificate executed by the appropriate Veterinarian in Charge will be acceptable in lieu of the owner's affidavit. The salvage shall be considered to be the net amount received for an animal after deducting freight, truckage, yardage, commission, slaughtering charges, and similar costs. The original of the salvage form or the affidavit of the owner or certificate of the appropriate Veterinarian in Charge, furnished in lieu thereof, shall be furnished to the Veterinarian in charge if it is not already in his possession. Additional copies may be furnished to the State officials, if required. Destruction of livestock by burial, incineration or other disposal of carcasses shall be supervised by an APHIS or State representative who shall prepare and transmit to the Veterinarian in Charge a report identifying the animals and showing the disposition thereof.

(Approved by the Office of Management and Budget under control number 0579-0001)

[40 FR 27009, June 26, 1975, as amended at 48 FR FR 57471, Dec. 30, 1983; 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998; 67 FR 7592, Feb. 20, 2002]

§ 50.12 Claims for indemnity.

Claims for Federal indemnity for livestock destroyed because of tuberculosis shall be presented on indemnity claim forms furnished by APHIS on which the owner of the animals covered thereby shall certify that the animals are or are not, subject to any mortgage as defined in this Part. If the owner states there is a mortgage, the APHIS indemnity claim form shall be signed by the owner and by each person holding a mortgage on the animals consenting to the payment of any indemnity allowed to the person specified thereon. Payment will be made only if

the APHIS indemnity claim form has been approved by a proper State official and if payment of the claim has been recommended by the appropriate Veterinarian in Charge or an official designated by him. On claims for indemnity made under the provisions of § 50.3, the Veterinarian in Charge or official designated by him shall record on the APHIS indemnity claim form the amount of Federal and State indemnity payments that appear to be due to the owner of the animals. The owner of the animals shall be furnished a copy of the APHIS indemnity claim form. The Veterinarian in Charge or official designated by him shall then forward the APHIS indemnity claim form to the appropriate official for further action on the claim. No charges for holding the livestock on the farm pending slaughter or for trucking by the owner shall be so deducted or otherwise paid by the Department.

[40 FR 27009, June 26, 1975, as amended at 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998; 67 FR 7592, Feb. 20, 2002]

§ 50.13 Disinfection of premises, conveyances, and materials.

All premises, including all structures, holding facilities, conveyances, or materials which are determined by the appropriate Veterinarian in Charge to constitute a health hazard to humans or animals because of tuberculosis shall be properly cleaned and disinfected, in accordance with procedures approved by the Department, within 15 days after the removal of tuberculosis infected or exposed livestock except that the Veterinarian in Charge, for reasons satisfactory to him, may extend the time limit for disinfection to 30 days when request for such extension is received by him prior to the expiration date of the original 15-day period allowed.

[40 FR 27009, June 26, 1975, as amended at 52 FR 39614, Oct. 23, 1987; 60 FR 37809, July 24, 1995; 67 FR 7592, Feb. 20, 2002]

§ 50.14 Claims not allowed.

Claims for compensation for livestock destroyed because of tuberculosis will not be allowed in any of the following cases:

(a) The claimant has failed to comply with any of the requirements of this part:

(b) All cattle, bison, and captive cervids 12 months of age or over in the claimant's herd have not been tested for tuberculosis under APHIS or State supervision: *Provided, however*, that cattle, bison, and captive cervids destroyed because of tuberculosis are exempt from this testing requirement if the cattle, bison, and captive cervids are subjected to a postmortem examination for tuberculosis by a Federal or State veterinarian.

(c) There is substantial evidence that the owner of the animals or the agent of the owner has in any way been responsible for any attempt to obtain indemnity funds for the animals unlawfully or improperly.

(d) At the time the cattle, bison, or captive cervids in the claimant's herd were tested for tuberculosis, the cattle, bison, captive cervids, or other livestock in the herd belonged to or were on the premises of any person to whom they had been sold, shipped, or delivered for slaughter unless or until all of the cattle, bison, captive cervids, and other livestock remaining on the premises or in the herd from which the tested cattle, bison, or captive cervids originated are tested or otherwise examined for tuberculosis in a manner satisfactory to the Administrator or his or her designated representative.

(e) If the cattle, bison, or captive cervids were added to a herd while the herd was quarantined for tuberculosis, unless an approved herd plan was in effect at the time the claim was filed. As part of the approved herd plan, cattle, bison, or captive cervids added to a herd quarantined for tuberculosis must:

(1) Be from an accredited herd, as defined in § 77.1 of this chapter; or

(2)(i) Be from a herd that tested negative to an official tuberculin test, as defined in § 77.1 of this chapter, during the 60 days before the cattle, bison, or captive cervids were added to the claimant's herd; and

(ii) Have been found negative to an official tuberculin test, as defined in § 77.1 of this chapter, during the 60 days before the cattle, bison, or captive

cervids were added to the claimant's herd.

(f) For exposed cattle, bison, or captive cervids destroyed during herd depopulation, if a designated tuberculosis epidemiologist has determined that other livestock in the herd have been exposed to tuberculosis by reason of association with tuberculous livestock, and those other livestock determined to have been exposed to tuberculosis have not been destroyed.

(g) For livestock other than cattle, bison, and captive cervids that are destroyed because of association with herds of affected cattle, bison, or captive cervids:

(1) If the livestock did not reside among the herd for a period of 4 months or more;

(2) If the livestock have not received a postmortem examination for tuberculosis; or

(3) If the livestock were added to a herd that was under quarantine for tuberculosis at the time the livestock were added to the herd, unless an approved herd plan was in effect at that time.

[67 FR 7592, Feb. 20, 2002]

§§ 50.15–50.16 [Reserved]

Subpart B—Dairy Cattle and Facilities in the El Paso, Texas, Region

SOURCE: 67 FR 48751, July 26, 2002, unless otherwise noted.

§ 50.17 Payment.

(a) *Eligibility for payment.* Owners of dairy operations, including owners of dairy cattle and other property used in connection with a dairy business or fluid milk processing plant, are eligible to receive payment from the Department under this subpart in connection with a buffer zone depopulation program due to tuberculosis, provided the owners meet all applicable requirements of this subpart and the dairy cattle herd is within the area circumscribed by the following boundaries: Beginning at the point where the Hudspeth-El Paso County line intersects U.S. Highway 62; then west along U.S. Highway 62 to the El Paso Toll

Bridge; then southeast along the Rio Grande River to the Fort Hancock-El Porvenir Bridge; then northeast along spur 148 to Interstate 10; then northwest along Interstate 10 to the Hudspeth-El Paso County line; then north along the Hudspeth-El Paso County line to the point of beginning.

(b) To be eligible for payment, each of the owners of dairy cattle and other property within the area described in paragraph (a) of this section must sign and adhere to an agreement with APHIS to do the following:

(1) Cease all dairy cattle operations within the described area and dispose of all sexually intact cattle on the dairy operation premises no later than 3 years after all eligible owners have signed their respective agreements;

(2) Conduct no dairy farming or other dairy activity, including the rearing of breeding cattle, but not including the grazing or feeding of steers and spayed heifers intended for terminal market, within the area described in paragraph (a) of this section until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements.

(3) Allow a covenant to be placed on their properties where dairy operations have been conducted that will prevent the establishment of any breeding cattle operations (not including the grazing or feeding of steers and spayed heifers intended for terminal market) on the premises until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements.

(4) Maintain responsibility for all cattle on the premises used in the dairy operation until those animals are removed from the premises;

(5) Make all arrangements for the removal of sexually intact cattle from the premises;

(6) Notify APHIS officials of the intended removal of all sexually intact cattle from the premises and provide

APHIS officials with the opportunity to monitor and evaluate the removal operations; and

(7) Such other terms, provisions, and conditions as agreed by each owner and APHIS.

(c) *Amount of payment for cattle and other property.* Upon approval of a claim submitted in accordance with § 50.20 of this subpart, owners eligible for payments under paragraph (a) of this section will receive payments for cattle and other property, the amount of which is determined by the following rates:

(1) For milking cows, an amount not to exceed \$2,922 per animal; and

(2) For heifers, an amount not to exceed \$834 per animal.

(d) Any dairy cattle added to a premises after the date an owner has signed the agreement required under paragraph (b) of this section will not be included in the rate calculation in paragraph (c) of this section and must be disposed of within 3 years after all eligible owners have signed their respective agreements.

(e) *Amount of payment for certain other property.* In addition to the amounts paid under paragraph (c) of this section, amounts will be paid as follows:

(1) For expenses in relocating equipment of a reverse osmosis plant in El Paso County, TX, an amount equal to the costs of relocating the plant's equipment, not to exceed \$675,000.

(2) In conjunction with the permanent closure of a fluid milk processing plant in El Paso County, TX, an amount not to exceed \$950,000, with payment to be made in the same manner and at the same times, on a pro rata basis, as payments are made to such owners for their dairy cattle and other property.

(Approved by the Office of Management and Budget under control number 0579-0193)

[67 FR 48751, July 26, 2002, as amended at 68 FR 10361, Apr. 4, 2003]

§ 50.18 Identification and disposal of cattle.

(a) All dairy cattle disposed of under this subpart must travel from the premises of origin to their final destination with an approved metal eartag, supplied by APHIS or the State

§ 50.19

representative, bearing a serial number and attached to each animal's left ear.

(b) Dairy cattle disposed of under this subpart must be shipped under permit either:

(1) Directly to slaughter at a Federal or State inspected slaughtering establishment; or

(2) Under permit directly to a live-stock market and, under the supervision of an APHIS representative or State representative, through a live-stock market pen that is dedicated to and marked exclusively for use for animals moved to slaughter, and then directly to slaughter at a Federal or State inspected slaughtering establishment.

(Approved by the Office of Management and Budget under control number 0579-0193)

§ 50.19 Report of salvage proceeds.

A report of the salvage derived from the sale of each animal for which a claim for payment is made under this subpart must be made on a salvage form acceptable to APHIS that must be signed by the purchaser or by the selling agent handling the animals. If the cattle are sold by the pound, the salvage form must show the weight, price per pound, gross receipts, expenses if any, and net proceeds. If the cattle are not sold on a per-pound basis, the net purchase price of each animal must be stated on the salvage form and an explanation showing how the amount was arrived at must be submitted. In the event the animals are not disposed of through regular slaughterers or through selling agents, the owner must furnish, in lieu of the salvage form, an affidavit showing the amount of salvage obtained by him or her and must certify that such amount is all he or she has received or will receive as salvage for the animals. The original of the salvage form or the affidavit of the owner must be furnished to the veterinarian in charge within 3 months of destruction of the animals, if such document is not already in his or her possession. Disposal of cattle by burial, incineration, or other means must be supervised by an APHIS or State representative, who will prepare and transmit to the veterinarian in charge a report identifying the animals and showing their disposition, or be docu-

9 CFR Ch. I (1-1-04 Edition)

mented by an affidavit of the owner that identifies the animals and describes their disposition. The owner must provide a copy of the affidavit to the veterinarian in charge within 3 months of destruction of the animals. The salvage form, disposal certificate, or affidavit will be for information purposes only and will have no effect on the amount of any payment due.

(Approved by the Office of Management and Budget under control number 0579-0193)

§ 50.20 Claims for payment.

Claims for payment, other than for reimbursement of relocation expenses of the reverse osmosis dairy plant, must be presented on payment claim forms furnished by APHIS.³ On the claim form, the owner must certify that the animals or other property are, or are not, subject to any mortgage. If the owner states that there is a mortgage, the claim form must be signed by the owner and by each person holding a mortgage on the cattle or other property, who must agree that the person specified on the claim form may receive any payment due. The APHIS veterinarian in charge or the official designated by him or her will record on the claim form the amount of payment that appears to be due to the owner, and the owner will be furnished a copy of the APHIS payment claim form. The veterinarian in charge or official designated by him or her will then forward the APHIS payment claim form to the appropriate APHIS official for further action on the claim. The Department will not pay any costs arising from the holding of the cattle pending slaughter, or for trucking and other transportation costs, yardage, commission, slaughtering charges, or for any other costs related to having the cattle slaughtered. The owner of the reverse osmosis plant must submit copies of

³Claim forms may be obtained from the veterinarian in charge. The location of the veterinarian in charge may be obtained by writing to National Animal Health Program VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737, or by referring to the local telephone book.

Animal and Plant Health Inspection Service, USDA

§ 51.1

the relevant documentation for relocation of equipment to the veterinarian in charge.

(Approved by the Office of Management and Budget under control number 0579-0193)

§ 50.21 Schedule of payments.

(a) The Department will make payment, other than for reimbursement of relocation expenses of the equipment of the reverse osmosis plant, at 90-day intervals. The first payment will be made no earlier than 30 days after all owners eligible for payment have signed their agreements required under § 50.17(b). The Department will determine the amount to be paid to each owner in each payment by multiplying the total agreement amount for that owner by a fraction that is arrived at by dividing the initial census number of dairy cattle for the respective owner into the number of dairy cattle that have been removed from the owner's herd during that payment period. From this amount, 10 percent will be withheld until all animals in the herd have been disposed of and the requirements of this subpart have been met. The payments to other property owners will be determined by multiplying the total agreement amount for that other property times the same ratio as for the herd related to that other property, minus 10 percent. The Department will make payment for reimbursement of relocation expenses of the reverse osmosis plant within 30 days after the relocation of the plant is completed and the owner of the plant has submitted to APHIS all documentation of the costs of the relocation.

(b) The Department will not make final payments until the premises used for dairy operations have been without sexually intact cattle for at least 30 days and until APHIS has inspected the premises and has found them to be free of manure, except for non-solid areas such as lagoons, and free of all feedstuffs that are not in barns, containers or feeders.

§ 50.22 Claims not allowed.

The Department will not allow claims for payment if the claimant has failed to comply with any of the requirements of this subpart, or there is substantial evidence, as determined by

the Administrator, that the claimant has been responsible for any attempt to obtain payment funds for such cattle or other dairy property unlawfully or improperly.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Sec.

51.1 Definitions.

51.2 Cooperation with States.

51.3 Payment to owners for animals destroyed.

51.4 Record of tests.

51.5 Identification of animals to be destroyed because of brucellosis.

51.6 Destruction of animals; time limit for destruction of animals.

51.7 Claims for indemnity.

51.8 Disinfection of premises, conveyances, and materials.

51.9 Claims not allowed.

51.10 Part 53 of this chapter not applicable.

AUTHORITY: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

§ 51.1 Definitions.

For the purposes of this part, the following terms shall be construed, respectively, to mean:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative state-federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

Animals. Cattle, bison, and breeding swine.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Appraisal. An estimate of the fair market value of an animal to be destroyed because of brucellosis. The estimate shall be based upon the meat, dairy, or breeding value of the animal.

Brucellosis exposed animal. Except for a brucellosis reactor animal, any animal that: (1) Is part of or has been in contact with a herd known to be affected; or (2) has been in contact with a brucellosis reactor animal for a period of 24 hours or longer; or (3) has been in contact with a brucellosis reactor animal which has aborted, calved or farrowed within the past 30 days, or has a vaginal or uterine discharge.

Brucellosis reactor animal. Any animal classified as a brucellosis reactor as provided in the definition of official test in §78.1 of this chapter.

Claimant. A person who files a claim for indemnity under §51.7 for animals destroyed under this part.

Complete herd test. An official test for brucellosis (as defined in 9 CFR 78.1) performed under APHIS supervision in a cattle or bison herd on all cattle or bison that are (1) 6 months of age or more and not official vaccinates, except steers and spayed heifers; or (2) Official calfhood vaccinates of any age that are parturient or postparturient; or (3) Official calfhood vaccinates of beef breeds or bison with the first pair of permanent incisors fully erupted (2 years of age or more); or (4) Official calfhood vaccinates of dairy breeds with partial eruption of the first pair of permanent incisors (20 months of age or more).

Condemn. The determination made by an APHIS representative, State representative, or accredited veterinarian that animals for which indemnity is sought under this Part shall be destroyed.

Dairy cattle. A female bovine of a recognized dairy breed over 20 months of age, which has calved or is within 90 days of parturition and which is a member of a dairy herd used to produce milk for commercial use.

Destroyed. Condemned under State authority and slaughtered or otherwise dies.

Herd. Any group of animals of the same species maintained on common ground for any purpose, or two or more groups of animals (of the same species) under common ownership or supervision, geographically separated but which have an interchange or movement of animals without regard to health status.

Herd Depopulation. Removal by slaughter or other means of destruction of all cattle, bison, or swine in a herd or from a specific premises or under common ownership prior to restocking such premises with new animals, except that steers and spayed heifers or barrows and gilts maintained for feeding purposes may be retained on the premises if the Veterinarian in Charge finds such retention to be compatible with eradication efforts. The Veterinarian in Charge may also permit removal of nonpregnant heifers, without payment of indemnity, to Quarantined Feedlots in lieu of immediate slaughter.

Herd known to be affected. Any herd in which any animal has been classified as a brucellosis reactor and which has not been released from quarantine.

Inbred or hybrid swine. Any breeding swine which are the progeny of two or more breeds of registered swine and which are maintained to produce inbred or hybrid swine, and for which records of ancestry exist through which such swine can be individually identified as progeny of said registered swine.

Mortgage. Any mortgage, lien, or other security or interest that is recorded under State law or identified in the indemnity claim form filed under §51.7 and held by any person other than the one claiming indemnity.

Official seal. A serially numbered metal strip consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged, which cannot be reused if opened, and is applied by a representative of the Veterinarian in Charge or the State animal health official.

Owner. Any person who has a legal or rightful title to animals whether or not they are subject to a mortgage.

Permit. An official document for movement of animals under this Part issued by an APHIS representative, state representative, or accredited veterinarian listing the disease status and identification of the animal, where consigned, cleaning and disinfecting requirements, and proof of slaughter certification.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity.

Recognized slaughtering establishment. Any slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act.¹

Registered breed association. An association formed and perpetuated for the maintenance of records of purebreeding of animal species for a specific breed whose characteristics are set forth in Constitutions, By-Laws, and other rules of the association. The records maintained by such an association shall include an Official Herd Book or other recordkeeping format and Certificates of Registration or Recordation which identify an animal as a registered animal of that registered breed association. Known registered breed associations are: American Angus Association, American Beefalo Association, Inc., The American Black Maine-Anjou Association, American Blonde d'Aquitaine Association, American Brahman Breeders Association, American Brahmental Association, American Breed Association, Inc., American Chianina Association, American Dexter Cattle Association, American Galloway Breeders Association, American Gelbvieh Association, American Guernsey Cattle Club, American Hereford Association, American International Charolais Association, American (International) Marchigiana Society, American Jersey Cattle Club, American Maine-Anjou Association, American Milking Shorthorn Society, American Murray Grey Association, American Normande Association, American Pinzgauer Association, American Polled Hereford Association, American Red Brangus Association, American Red Poll Association, American Salers Association, American Scotch Highland Breeders Association, American Shorthorn Association, American Simmental Association, Inc., American

Tarentaise Association, Ankina Breeders, Inc., Ayrshire Breeders Association, Barzona Breed Association of America, Beefmaster Breeders Universal, Belted Galloway Society, Brahmanstein Breeders Association, Brown Swiss Beef International, Inc., Brown Swiss Cattle Breeders Association of U.S.A., Char-Swiss Breeders Association, Devon Cattle Association, Inc., Dutch Belted Cattle Association of America, Inc., Foundation Beefmaster Association, Galloway Cattle Society of America, Inc., Galloway Performance International, Holstein-Friesian Association of America, International Braford Association, International Brangus Breeders Association, Inc., International Maine-Anjou Association, Marky Cattle Association, Mid America RX³ Cattle Company, National Beefmaster Association, North American Limousin Foundation, Pan American Zebu Association, Red and White Dairy Cattle Association, Red Angus Association of America, Red Poll Beef Breeders International, Red Poll Cattle Club of America, Santa Gertrudis Breeders International, Simbrah Association, South Devon Breed Society, Sussex Cattle Association of America, Texas Longhorn Breeders Association of America, and White Park Cattle Association of America.

Registered cattle. Cattle for which individual records of ancestry are recorded and maintained by a breed association whose purpose is the improvement of the bovine species, and for which individual registration certificates are issued and recorded by such breed association.

Registered swine. Any breeding swine for which a certificate of pure breeding has been issued by a purebred swine association.

Sexually intact exposed female calf. A female bovine less than 6 months of age that is nursed by a brucellosis reactor at the time such reactor is condemned, and that has not been altered to make it incapable of reproduction.

Specifically approved stockyard. Premises approved by the Administrator, in

¹A list of recognized slaughtering establishments is available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, MD 20737-1231.

§51.2

9 CFR Ch. I (1–1–04 Edition)

accordance with §71.20 of this chapter, for assembling cattle or bison for sale.²

State. Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other territory or possession of the United States.

State animal health official. The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs in that State.

State representative. An individual employed in animal health activities by a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Unofficial vaccinate. Any cattle or bison which have been vaccinated for brucellosis other than in accordance with the provisions for official vaccines set forth in §78.1 of this chapter.

Veterinarian in Charge. The veterinary official of the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Administrator to supervise and perform official animal health work of the Animal and Plant Health Inspection Service, in the State concerned.

[42 FR 64336, Dec. 23, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §51.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§51.2 Cooperation with States.

The Administrator has been delegated the authority to cooperate with the proper State authorities in the eradication of brucellosis and to pay indemnities for the destruction of brucellosis-reactor animals or brucellosis-exposed animals.

[42 FR 64336, Dec. 23, 1977, as amended at 54 FR 32435, Aug. 8, 1989]

²Notices containing lists of specifically approved stockyards are published in the FEDERAL REGISTER. Lists of specifically approved stockyards also may be obtained from the State animal health official, State representatives, or APHIS representatives.

§51.3 Payment to owners for animals destroyed.

(a) *Cattle and bison.* The Administrator may authorize the payment of Federal indemnity by the U.S. Department of Agriculture to any owner whose cattle or bison are destroyed after having been approved for destruction by APHIS under the brucellosis eradication program.³ In all cases, the amount of Federal indemnity will be determined in accordance with the regulations in this part that were in effect on the date that reactors were found or the date that whole-herd depopulation or destruction of individual animals was approved. Prior to payment of indemnity, proof of destruction⁴ must be furnished to the Veterinarian in Charge.

(1) *Eligibility for indemnity.* Owners of the following types of animals destroyed because of brucellosis are eligible to receive Federal indemnity for their animals:

(i) Cattle and bison identified as reactors as a result of a complete herd test and any sexually intact exposed female calves;

(ii) Cattle and bison in a herd that has been approved for depopulation; and

³The Administrator shall authorize payment of Federal indemnity by the U.S. Department of Agriculture at the maximum per-head rates in §51.3: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) in States or areas not under Federal quarantine; (c) in States requesting payment of Federal indemnity; and (d) in States not requesting a lower rate.

⁴The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) a meat inspection certification of slaughter; (c) a written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) a written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) a permit (VS Form 1-27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) in unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

(iii) Brucellosis-exposed cattle and brucellosis-exposed bison that were previously sold or traded from any herd that was, subsequent to the sale or trade, found to be affected with brucellosis. Epidemiological information such as test results, herd history, and related evidence will be used to establish a probable date when the herd was first affected with brucellosis. Animals sold after that date will be considered to be exposed; those sold before that date will not.

(2) *Maximum per-head indemnity amounts.* Owners of the types of animals described in §51.3(a)(1) are eligible to receive Federal indemnity for their animals in the following amounts:

(i) *Brucellosis reactors and sexually intact exposed female calves.* Except for brucellosis reactors and sexually intact exposed female calves destroyed as part of a whole-herd depopulation, the indemnity for cattle and bison that are brucellosis reactors shall not exceed \$250 for any registered cattle and non-registered dairy cattle or \$50 for any bison or nonregistered cattle other than dairy cattle, and the indemnity for sexually intact exposed female calves shall not exceed \$50.

(ii) *Herd depopulations and individual exposed animals.* Owners of herds that have been approved for depopulation and owners of brucellosis-exposed cattle and brucellosis-exposed bison that meet the conditions of §51.3 (a)(1)(iii) may choose either of the two methods described in paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B) of this section, involving fair market value of the animal to be destroyed or a fixed rate, for determining the maximum amounts of indemnity they may receive.³ The method chosen must be used for all animals to be destroyed. Owners have the option of having an appraisal done prior to choosing the method used. Appraisals will be conducted by an independent appraiser selected by the Administrator. The cost of the appraisals will be borne by APHIS.

(A) *Appraisal method.* Each eligible animal will be appraised to determine its fair market value. The indemnity shall be the appraised value, minus the salvage value.

(B) *Fixed-rate method.* The indemnity shall not exceed \$250 per animal for

bison and nonregistered cattle other than dairy cattle and \$750 per animal for registered cattle and nonregistered dairy cattle.

(b) *Swine*—(1) *Brucellosis reactor swine.* The Administrator may authorize³ the payment of Federal indemnity by the United States Department of Agriculture to an owner whose breeding swine are destroyed as brucellosis reactors. The indemnity shall not exceed \$25 per head for registered, inbred, or hybrid swine, or \$10 per head for all other breeding swine. Prior to payment of indemnity, proof of destruction⁴ shall be furnished to the Veterinarian in Charge.

(2) *Herd depopulation.* The Administrator may authorize³ the payment of Federal indemnity by the United States Department of Agriculture to an owner whose herd of breeding swine or whose whole herd is destroyed because of brucellosis. The indemnity shall not exceed \$150 per head for registered, inbred, or hybrid breeding swine, and \$65 per head for all other breeding swine, except that in the case of whole herd depopulation, indemnity payments shall be paid on all swine in the herd at fair market value, as determined by the Administrator, based on an appraisal conducted by an independent appraiser assigned by the Administrator. In cases where indemnity is paid for whole herd depopulation, indemnity payments, plus any salvage, must not exceed the appraised value of each animal. Indemnity payment shall be made only for brucellosis exposed swine or for swine from a herd known to be affected and only when the Administrator determines that the destruction of all swine in the herd will contribute to the Brucellosis Eradication Program. Prior to payment of indemnity, proof of destruction⁴ shall be furnished to the Veterinarian in Charge.

(3) *Exposed swine.* The Administrator may authorize³ the payment of Federal indemnity by the United States Department of Agriculture to an owner whose breeding swine are destroyed because of brucellosis. The indemnity shall not exceed \$150 per head for registered, inbred, or hybrid swine, or \$65 per head for all other breeding swine. Indemnity payment shall be made only

§51.4

9 CFR Ch. I (1–1–04 Edition)

for such brucellosis exposed swine and only when the Administrator determines that the destruction of such swine will contribute to the Brucellosis Eradication Program. Prior to payment of indemnity, proof of destruction⁴ shall be furnished to the Veterinarian in Charge.

(Approved by the Office of Management and Budget under control number 0579–0047)

[42 FR 64336, Dec. 23, 1977, as amended at 45 FR 43679, June 27, 1980; 46 FR 13673, Feb. 23, 1981; 46 FR 57027, Nov. 20, 1981; 47 FR 53323, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 51 FR 11300, Apr. 2, 1986; 54 FR 32435, Aug. 8, 1989; 56 FR 18505, 18506, Apr. 23, 1991; 57 FR 49376, Nov. 2, 1992; 57 FR 60086, Dec. 18, 1992; 59 FR 12533, Mar. 17, 1994; 59 FR 21635, Apr. 26, 1994; 59 FR 52235, Oct. 17, 1994; 63 FR 15284, Mar. 31, 1998; 63 FR 47423, Sept. 8, 1998]

§51.4 Record of tests.

The claimant shall be responsible for providing information to an APHIS representative, State representative, or accredited veterinarian so that a complete test record may be made by such person on an APHIS approved form for each herd known to be affected, including the reactor tag number of each brucellosis reactor animal and the registration name and number of each brucellosis reactor registered animal. A copy of the applicable test record shall be given to the owner of any such herd, and one copy of each such record shall be furnished to the appropriate State veterinarian's office by such person who completes the test record.

(Approved by the Office of Management and Budget under control number 0579–0047)

[42 FR 64336, Dec. 23, 1977, as amended at 48 FR 57472, Dec. 30, 1983; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991]

§51.5 Identification of animals to be destroyed because of brucellosis.

(a) The claimant shall be responsible for insuring that any animal for which indemnity is claimed shall be identified in accordance with the provisions of this section within 15 days after having been classified as a reactor or for any other animal subject to this part within 15 days after having been condemned. The veterinarian in charge may extend the time limit to 30 days when a request for such extension is re-

ceived by him prior to the expiration date of the original 15 day period allowed, and when he determines that the extension will not adversely affect the brucellosis eradication program; and except further, that the Administrator shall upon request in specific cases, extend the time limit beyond the 30-day period when unusual or unforeseen circumstances occur which prevent or hinder the identification of the animals within the 30-day period, such as, but not limited to, floods, storms, or other Acts of God which are beyond the control of the owner, or when identification is delayed due to requirements of another Federal Agency.

(b) Except as provided in paragraph (b)(4) of this section, cattle and bison to be destroyed because of brucellosis shall be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor," or a similar State reactor tag, and must be:

(1) "B" branded (as defined in §78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

(4) Reactor and exposed cattle and bison in herds scheduled for herd depopulation may be moved interstate without eartagging or branding if they are identified by USDA approved backtags and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(c) Swine shall be individually identified by tagging with a metal tag bearing a serial number and inscription "U.S. Reactor" or a similar State reactor tag or other identification approved

by the Administrator, upon request in specific cases, attached to the left ear of each animal.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977, as amended at 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991; 60 FR 48367, Sept. 19, 1995]

§51.6 Destruction of animals; time limit for destruction of animals.

(a) *Cattle*. The claimant shall be responsible for insuring that cattle subject to this part shall be sold under permit to a recognized slaughtering establishment or to a specifically approved stockyard for sale to a recognized slaughtering establishment.

(b) *Bison*. The claimant shall be responsible for insuring that bison subject to this part shall be sold under permit to a State or Federal slaughtering establishment approved by the Administrator for this purpose or to a stockyard approved by the Administrator for sale to such a slaughtering establishment, *Provided, However*, That the Administrator may approve such other bison slaughtering establishments as may be deemed necessary to accomplish destruction of bison subject to this part.

(c) *Swine*. The claimant shall be responsible for insuring that swine subject to this part shall be sold under permit to a slaughtering establishment where State or Federal Meat inspection is available, or to a market approved by the State Animal Health Official, or to a market approved by the Administrator, for sale to such slaughtering establishment;⁵ except that in the case of indemnity for whole herd depopulation, as provided for in §51.3, swine shall be destroyed, if possible, on the premises where the animals are held or penned at the time the indemnity is approved, or may be moved for destruction to another location when movement to the location is approved in advance by an APHIS representative. In cases where the swine are destroyed other than at a slaughtering establish-

ment, the carcasses of the swine shall be disposed of by burial, incineration, or other disposal means authorized by applicable State law. The destruction and disposition of animals destroyed in accordance with this section other than at a slaughtering establishment shall be performed in the presence of an APHIS representative.

(d) *Time limit for destruction of animals*. Payment of indemnity shall be made under this part only if the animals are destroyed within 15 days after the date of identification, pursuant to §51.5 of the regulations in this part, except that the appropriate Veterinarian in Charge may extend the time limit to 30 days when request for such extension is received from the owner prior to the expiration date of the original 15-day period allowed, or when the animals were sold for slaughter prior to the expiration date of the original 15-day period, and when the Veterinarian in Charge determines that such extension will not adversely affect the Brucellosis Eradication Program; and except further, that the Administrator shall, upon request in specific cases, extend the time limit beyond the 30-day period when unusual and unforeseen circumstances occur which prevent or hinder the destruction of the animals within the 30-day period, such as, but not limited to, floods, storms, or other Acts of God which are beyond the control of the owner, or when destruction is delayed due to requirements of another Federal Agency.

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[42 FR 64336, Dec. 23, 1977, as amended at 45 FR 43680, June 27, 1980; 45 FR 86410, Dec. 31, 1980; 46 FR 5861, Jan. 21, 1981; 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 51 FR 11300, Apr. 2, 1986; 51 FR 32599, Sept. 12, 1986; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991; 59 FR 12533, Mar. 17, 1994]

§51.7 Claims for indemnity.

(a) Claims for indemnity for animals destroyed because of brucellosis shall be presented on indemnity claim forms furnished by APHIS on which the owner of the animals covered thereby shall certify that the animals are or are not subject to any mortgage as defined in this part. If the owner states

⁵Markets are approved by the Administrator in accordance with §76.18 of this chapter.

there is a mortgage, the APHIS indemnity claim form shall be signed by the owner and by each person holding a mortgage on the animals, consenting to the payment of any indemnity allowed to the person specified thereon. Payment will be made only if the claimant has submitted a complete indemnity claim form to, and such claim has been approved by the Veterinarian in Charge or by an APHIS representative designated by him. On claims for indemnity made under the provisions of §51.3, the Veterinarian in Charge or an APHIS representative designated by him shall record on the APHIS indemnity claim form the amount of Federal and State indemnity payments that appear to be due to the owner of the animals. The owner of the animals shall be furnished a copy of the completed APHIS indemnity claim form. The Veterinarian in Charge or an APHIS representative designated by him shall then forward the completed APHIS indemnity claim form to the Administrator for further action on the claim. No charges for holding the animals on the farm pending slaughter or for trucking by the owner shall be so deducted or otherwise paid by the United States Department of Agriculture.

(b) Claims for indemnity for registered cattle shall be accompanied by the cattle's registration papers issued in the name of the owner. If the registration papers are unavailable or if the cattle are less than 1 year old and are not registered at the time the claim for indemnity is submitted, the Veterinarian in Charge may grant a 60-day extension or the Administrator may grant an extension longer than 60 days for the presentation of registration papers.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977. Redesignated at 46 FR 13674, Feb. 23, 1981, and 47 FR 53324, Nov. 26, 1982, and amended at 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991]

§51.8 Disinfection of premises, conveyances, and materials.

All premises, including all structures, holding facilities, conveyances, and materials, contaminated because

of occupation or use by brucellosis reactor or exposed animals shall be properly cleaned and disinfected with a disinfectant permitted by APHIS in accordance with recommendations of the APHIS or State representative within 15 days from the date reactors were removed from the premises, except that the appropriate Veterinarian in Charge may extend the time limit for disinfection to 30 days when request for such extension is received by him prior to the expiration date of the original 15-day period allowed, and when he determines that such extension will not adversely affect the Brucellosis Eradication Program; and except further, that the Administrator may, upon request in specific cases, extend the time limit beyond the 30-day period when unusual and unforeseen circumstances occur, such as but not limited to floods, storms, or other Acts of God, which are beyond the control of the owner, preventing or hindering the disinfection of premises, conveyances, and materials. Certain premises may be exempted from such cleaning and disinfecting requirements by approval of the appropriate Veterinarian in Charge on written recommendations by the APHIS or State representative or when a written report by the APHIS or State representative determines that there are no buildings, holding facilities, conveyances, or other materials on the premises that would require such cleaning and disinfection.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977. Redesignated at 46 FR 13674, Feb. 23, 1981, and 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991]

§51.9 Claims not allowed.

Claims for compensation for animals destroyed because of brucellosis shall not be allowed if any of the following circumstances exist:

(a) If the claimant has failed to comply with any of the requirements of this part.

(b) If the existence of brucellosis in the animal was determined based on

the results of an official test, as defined in § 78.1 of this chapter, and specific instructions for the administration of the official test had not previously been issued to the individual performing the test by APHIS and the State animal health official.

(c) If all cattle, bison, and swine eligible for testing in the claimant's herd have not been tested for brucellosis under APHIS or State supervision.

(d) If the animals are:

(1) Barrows or gilts maintained for feeding purposes; or

(2) Spayed heifers or steers, unless the steers are work oxen, or unless the spayed heifers or steers are unweaned animals in a herd approved for depopulation in accordance with § 51.3 of this part.

(e) If the animals are classified as reactors and are unofficial vaccinates, unless there is either a record of a negative official test made not less than 30 days following the date of unofficial vaccination or unless other APHIS approved tests show the unofficial vaccinates are affected with virulent *Brucella*.

(f) If there is substantial evidence that the owner or his agent has in any way been responsible for any unlawful or improper attempt to obtain indemnity funds for such animal.

(g) If, at the time of test or condemnation, the animals belonged to or were upon the premises of any person to whom they had been sold for slaughter; shipped for slaughter, or delivered for slaughter.

(h) If any known brucellosis reactor animal remains in the herd, unless, in the opinion of the Veterinarian in Charge, a reasonable search has been made for the brucellosis reactor animal and the brucellosis reactor animal could not be found and removed.

(i) If the animals are brucellosis reactor animals which are slaughtered other than as part of a herd depopulation, and which are from a herd: (1) That was already classified as a "herd known to be affected" at the time the animals were identified as brucellosis reactor animals and (2) for which an approved action plan or approved individual herd plan (as defined in § 78.1 of

this chapter) was not in effect at the time the claim was filed.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977. Redesignated at 46 FR 13674, Feb. 23, 1981, and 47 FR 53324, Nov. 26, 1982, and amended at 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 50 FR 47036, Nov. 14, 1985; 51 FR 11300, Apr. 2, 1986; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991; 63 FR 47423, Sept. 8, 1998]

§ 51.10 Part 53 of this chapter not applicable.

No claim for indemnity for animals destroyed because of brucellosis shall hereafter be paid under the regulations contained in part 53 of this chapter, but all such claims shall be presented and paid pursuant to and in compliance with regulations contained in this part.

[42 FR 64336, Dec. 23, 1977. Redesignated at 46 FR 13674, Feb. 23, 1981, and 47 FR 53324, Nov. 26, 1982; 50 FR 11993, Mar. 27, 1985]

PART 52—SWINE DESTROYED BECAUSE OF PSEUDORABIES

Sec.

52.1 Definitions.

52.2 Payment of indemnity.

52.3 Appraisal of swine.

52.4 Presentation of claims.

52.5 Report of net salvage proceeds.

52.6 Claims not allowed.

52.7 Disinfection of premises, conveyances, and materials.

AUTHORITY: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 64 FR 2549, Jan. 15, 1999, unless otherwise noted.

§ 52.1 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this chapter to perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant

Health Inspection Service of the United States Department of Agriculture.

APHIS employee. Any individual employed by the Animal and Plant Health Inspection Service who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

Approved differential pseudorabies test. Any test for the diagnosis of pseudorabies that can distinguish vaccinated swine from infected swine; is produced under license from the Secretary of Agriculture under the Virus-Serum-Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 *et seq.*) with indications for use in the Cooperative State-Federal Pseudorabies Eradication Program; and is conducted in a laboratory approved by the Administrator.¹

Department. The United States Department of Agriculture.

Herd. Any group of swine maintained on common ground for any purpose, or two or more groups of swine under common ownership or supervision that are geographically separated but that are determined by an official pseudorabies epidemiologist to have an interchange or movement of animals that could cause the transmission of pseudorabies from one group to another.

¹The names and addresses of laboratories approved by the Administrator to conduct approved differential pseudorabies tests are published in the Notices Section of the FEDERAL REGISTER. A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, Maryland 20737–1231. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: employs personnel trained at the National Veterinary Services Laboratories assigned to supervise the testing; follows standard test protocols; meets check test proficiency requirements; and will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory, and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflict.

Inspector in charge. An APHIS employee who is designated by the Administrator to take charge of work in connection with the control and eradication of disease.

Known infected breeding sow. Any breeding sow that has been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or as diagnosed by an official pseudorabies epidemiologist as having pseudorabies.

Known infected herd. Any herd in which swine have been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or based on a diagnosis by an official pseudorabies epidemiologist.

Materials. Parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and articles stored in or adjacent to barns or other structures.

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

Net salvage. The amount received for swine destroyed because of pseudorabies, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner.

Official pseudorabies epidemiologist. A State or Federally employed veterinarian designated by the State animal health official and the veterinarian in charge to investigate and diagnose pseudorabies in livestock.

Official pseudorabies test. Any test for the diagnosis of pseudorabies approved by the Administrator and conducted in a laboratory approved by the Administrator. The following tests for the diagnosis of pseudorabies have been approved by the Administrator: Microtitration Serum-Virus Neutralization Test; Virus Isolation and Identification Test; Fluorescent Antibody Tissue Section Test; Enzyme-Linked Immunosorbent Assay (ELISA) Test, except for approved differential pseudorabies tests other than the glycoprotein I (gpI) ELISA test; Latex Agglutination Test (LAT); and Particle Concentration Fluorescence

Immunoassay (PCFIA) Test.² State, Federal, and university laboratories will be approved by the Administrator following his determination that the laboratory: has personnel trained at the Veterinary Services Diagnostic Laboratory at Ames, Iowa, assigned to supervise the test; follows standard test protocol; meets check test proficiency requirements; and will report all test results to State and Federal animal health officials.³

Official seal. A serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, that forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

Permit. An official document for movement of swine under this part that is issued by an APHIS employee, State representative, or accredited veterinarian and that lists the disease status and individual identification of the animal, where consigned, cleaning and disinfection requirements, and proof of slaughter certification by a recognized slaughtering establishment.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Pseudorabies. The contagious, infectious, and communicable disease of livestock and other animals, also known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

Recognized slaughtering establishment. A slaughtering establishment operating under the Federal Meat Inspec-

tion Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act.⁴

Secretary. The Secretary of Agriculture of the United States, or any officer or employee of the Department delegated to act in the Secretary's stead.

State. Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

State representative. A person regularly employed in the animal health work of a State and who is authorized by that State to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Veterinarian in charge. The veterinary official of Veterinary Services, APHIS, who is assigned by the Administrator to supervise and perform official animal health work for APHIS in the State concerned.

[64 FR 2549, Jan. 15, 1999, as amended at 65 FR 20711, Apr. 18, 2000; 68 FR 6342, Feb. 7, 2003]

§ 52.2 Payment of indemnity.

(a) Except as provided in paragraph (b) of this section, the Administrator is authorized to agree on the part of the Department to pay indemnity to the owner of herds of swine destroyed because the herds are known to be infected with pseudorabies, or individual breeding sows destroyed because they are known to be infected with pseudorabies. The amount of indemnity paid, together with the amount for net salvage the owner receives when the animals are slaughtered, shall not exceed the fair market value of the swine. Such swine must be sent directly to slaughter under permit in a conveyance closed with an official seal applied and removed by either an APHIS employee, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS employee. The swine

²Copies of the test protocols (Recommended Minimum Standards for Diagnostic Tests Employed in the Diagnosis of Pseudorabies (Aujeszky's Disease) are available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, Operational Support, 4700 River Road Unit 33, Riverdale, MD 20737-1231.

³Before the Administrator withdraws the approval of any laboratory, the Director of the laboratory will be given a notice by the Administrator of the proposed disapproval and the reasons for it, and the Director will have the opportunity to respond. In those instances where there are conflicts as to the facts, a hearing will be held to resolve such conflicts.

⁴A list of recognized slaughtering establishments is available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, Maryland 20737-1231.

§ 52.3

must be sent to a recognized slaughtering establishment.

(b) If swine from herds that are destroyed because the herds are known to be infected with pseudorabies are not accepted at a recognized slaughtering establishment, or the owner and an APHIS employee or State representative agree they will not be accepted by a recognized slaughtering establishment, the Administrator is authorized to pay 100 percent of the expenses of the purchase, destruction, and disposition of such swine.

(Approved by the Office of Management and Budget under control number 0579-0151)

[65 FR 20711, Apr. 18, 2000]

§ 52.3 Appraisal of swine.

(a) Herds of swine and individual breeding sows to be destroyed because they are known to be infected with pseudorabies will be appraised by an APHIS employee and a representative of the State jointly, a representative of the State alone, or, if the State authorities approve, by an APHIS employee alone.

(b) The appraisal of swine will be based on the fair market value as determined by the meat or breeding value of the animals. Animals may be appraised in groups, provided that where appraisal is by the head, each animal in the group is the same value per head, and where appraisal is by the pound, each animal in the group is the same value per pound.

(c) Appraisals of swine must be reported on forms furnished by APHIS and signed by the owner of the swine. Reports of appraisals must show the number of swine and the value per head or the weight and value by pound.

(Approved by the Office of Management and Budget under control number 0579-0137)

[64 FR 2549, Jan. 15, 1999, as amended at 65 FR 20711, Apr. 18, 2000]

§ 52.4 Presentation of claims.

(a) When swine have been destroyed under § 52.2(a), any claim for indemnity must be presented, along with the report of net salvage proceeds required under § 52.5, to the veterinarian in charge on a form furnished by APHIS.

(b) When swine have been destroyed under § 52.2(b), any claim for indemnity

9 CFR Ch. I (1-1-04 Edition)

must be presented, through the inspector in charge, to APHIS on a form furnished by APHIS.

(c) For all claims for indemnity, the owner of the swine must certify on the claim form that the swine covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the swine must sign, consenting to the payment of indemnity to the person specified on the form.

(Approved by the Office of Management and Budget under control number 0579-0137)

[65 FR 20711, Apr. 18, 2000]

§ 52.5 Report of net salvage proceeds.

A report of the amount for net salvage derived from the sale of each animal for which a claim for indemnity is made under § 52.2(a) must be made on a salvage form that shows the gross receipts, expenses if any, and net proceeds. The original or a copy of the salvage form must be furnished by the owner to the veterinarian in charge.

(Approved by the Office of Management and Budget under control number 0579-0151)

[65 FR 20712, Apr. 18, 2000]

§ 52.6 Claims not allowed.

(a) The Department will not allow claims arising out of the destruction of swine unless the swine have been appraised as prescribed in this part and the owners have signed a written agreement to the appraisals.

(b) The Department will not allow claims arising out of the destruction of swine that have been moved or handled by the owner or a representative of the owner in violation of a law or regulation administered by the Secretary regarding animal disease, or in violation of a law or regulation for which the Secretary has entered into a cooperative agreement.

(Approved by the Office of Management and Budget under control number 0579-0137)

[64 FR 2549, Jan. 15, 1999. Redesignated at 65 FR 20711, Apr. 18, 2000]

§ 52.7 Disinfection of premises, conveyances, and materials.

All premises, including barns, stockyards and pens, and all cars and other

conveyances, and the materials on any premises or conveyances used to house or transport swine for which indemnity is paid under this part must be cleaned and disinfected under the supervision of an APHIS employee after removal of the swine from the known infected herd. Premises may be restocked with swine 30 days following an approved cleaning and disinfection, unless an official pseudorabies epidemiologist determines that a shorter or longer period of time is adequate or necessary to protect new animals against infection. The owner to whom the indemnity is paid will be responsible for expenses incurred in connection with the cleaning and disinfection, except for cleaning and disinfection of the conveyances used to transport the swine to the location of disposal.

[64 FR 13065, Mar. 17, 1999. Redesignated at 65 FR 20711, Apr. 18, 2000]

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

Sec.

- 53.1 Definitions.
- 53.2 Determination of existence of disease; agreements with States.
- 53.3 Appraisal of animals or materials.
- 53.4 Destruction of animals.
- 53.5 Disinfection or destruction of materials.
- 53.6 Disinfection of animals.
- 53.7 Disinfection of premises, conveyances, and materials.
- 53.8 Presentation of claims.
- 53.9 Mortgage against animals or materials.
- 53.10 Claims not allowed.
- 53.11 Payments arising from low pathogenic avian influenza; conditions for payment.

AUTHORITY: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

CROSS REFERENCE: For non-applicability of part 53 with respect to certain claims for indemnity, see § 51.10 of this chapter.

§ 53.1 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A of this chapter and subchapters B, C, and D of this chapter, and to perform

functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

Animals. Livestock, poultry, and all other members of the animal kingdom, including birds whether domesticated or wild, but not including man.

APHIS employee. Any individual employed by the Animal and Plant Health Inspection Service who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

Bird. Any member of the class *aves* other than poultry.

Department. The United States Department of Agriculture.

Disease. Foot-and-mouth disease, rinderpest, contagious pleuropneumonia, exotic Newcastle disease, highly pathogenic avian influenza, infectious salmon anemia, or any other communicable disease of livestock or poultry that in the opinion of the Secretary constitutes an emergency and threatens the livestock or poultry of the United States.

Exotic Newcastle Disease (END). Any velogenic Newcastle disease. Exotic Newcastle disease is an acute, rapidly spreading, and usually fatal viral disease of birds and poultry.

Highly pathogenic avian influenza. (1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 ml of a 1:10 dilution of a bacteria-free, infectious allantoic fluid;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the hemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five chickens and grows in cell culture in the absence of trypsin.

Inspector in charge. An APHIS employee who is designated by the Administrator to take charge of work in connection with the control and eradication of disease.

ISA Program veterinarian. The APHIS veterinarian assigned to manage the infectious salmon anemia program for APHIS in the State of Maine and who reports to the Area Veterinarian in Charge.

Materials. Parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and articles stored in or adjacent to barns or other structures.

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Pet bird. Any bird that is kept for personal pleasure and is not for sale.

Poultry. Chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl.

Secretary. The Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has been or may be delegated to act in the Secretary's stead.

State. Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

[61 FR 56882, Nov. 5, 1996, as amended at 67 FR 17610, Apr. 11, 2002]

§ 53.2 Determination of existence of disease; agreements with States.

(a) The Administrator is hereby authorized to invite the proper State authorities to cooperate with the Department in the control and eradication of any disease within the meaning of § 53.1.

(b) Upon agreement of the authorities of the State to enforce quarantine restrictions and orders and directives properly issued in the control and eradication of such a disease, the Ad-

ministrator is hereby authorized to agree, on the part of the Department, to cooperate with the State in the control and eradication of the disease, and, except as provided in § 53.11, to pay 50 percent (and in the case of exotic Newcastle disease or highly pathogenic avian influenza, up to 100 percent, and in the case of infectious salmon anemia, up to 60 percent) of the expenses of purchase, destruction and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease: *Provided, however,* That if the animals were exposed to such disease prior to or during interstate movement and are not eligible to receive indemnity from any State, the Department may pay up to 100 percent of the purchase, destruction, and disposition of animals and materials required to be destroyed: *Provided, further,* That the cooperative program for the purchase, destruction, and disposition of birds shall be limited to birds which are identified in documentation pursuant to Cooperative Agreements,¹ as constituting a threat to the poultry industry of the United States: *And provided further,* That the Secretary may authorize other arrangements for the payment of such expenses upon finding that an extraordinary emergency exists.

[37 FR 5689, Mar. 18, 1972, as amended at 49 FR 3448, Jan. 27, 1984; 49 FR 26712, June 29, 1984; 61 FR 56883, Nov. 5, 1996; 67 FR 17610, Apr. 11, 2002; 67 FR 67095, Nov. 4, 2002]

§ 53.3 Appraisal of animals or materials.

(a) Animals affected by or exposed to disease, and materials required to be destroyed because of being contaminated by or exposed to disease shall be appraised by an APHIS employee and a representative of the State jointly, or, if the State authorities approve, by an APHIS employee alone.

(b) The appraisal of animals shall be based on the fair market value and shall be determined by the meat, egg production, dairy or breeding value of

¹ Agreements between the Departments and the particular State involved relating to cooperative animal (including poultry) disease prevention, control, and eradication.

such animals. Animals may be appraised in groups providing they are the same species and type and providing that where appraisal is by the head each animal in the group is the same value per head or where appraisal is by the pound each animal in the group is the same value per pound.

(c) Appraisals of animals shall be reported on forms furnished by APHIS. Reports of appraisals shall show the number of animals of each species and the value per head or the weight and value by pound.

(d) Appraisals of materials shall be reported on forms furnished by APHIS. Reports of appraisals of materials shall, when practicable, show the number, size or quantity, unit price, and total value of each kind of material appraised.

[28 FR 5935, June 13, 1963, as amended at 35 FR 13981, Sept. 3, 1970; 36 FR 25217, Dec. 30, 1971; 56 FR 51974, Oct. 17, 1991; 68 FR 6343, Feb. 7, 2003]

§ 53.4 Destruction of animals.

(a) Except as provided in paragraph (b) of this section, animals infected with or exposed to disease shall be killed promptly after appraisal and disposed of by burial or burning, unless otherwise specifically provided by the Administrator, at his or her discretion. In the case of animals depopulated due to infectious salmon anemia, salvageable fish may be sold for rendering, processing, or any other purpose approved by the Administrator. In the case of poultry depopulated because of low pathogenic avian influenza related to the 2002 disease situations in Virginia and Texas associated with the H5 or H7 virus, poultry may be slaughtered and sold. The proceeds gained from the sale of the fish or poultry will be subtracted from any payment from APHIS for which the producer or owner is eligible under § 53.2(b) or § 53.11.

(b) In the case of low pathogenic avian influenza related to the 2002 disease situations in Virginia and Texas associated with the H5 or H7 virus, the value of poultry depopulated because of the disease may be calculated following destruction and disposal of the poultry, based on the number, type, and age of the animals destroyed.

(c) The killing of animals and the burial, burning, or other disposal of carcasses of animals pursuant to the regulations in this part shall be supervised by an APHIS employee who shall prepare and transmit to the Administrator a report identifying the animals and showing the disposition thereof.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991; 67 FR 67095, Nov. 4, 2002; 68 FR 42569, July 18, 2003]

§ 53.5 Disinfection or destruction of materials.

(a) In order to prevent the spread of disease, materials contaminated by or exposed to disease shall be disinfected: *Provided, however,* That in all cases in which the cost of disinfection would exceed the value of the materials or disinfection would be impracticable for any reason, the materials shall be destroyed, after appraisal as provided in § 53.3.

(b) The disinfection or destruction of materials under this section shall be under the supervision of an APHIS employee who shall prepare and transmit to the Administrator a certificate identifying all materials which are destroyed, showing the disposition thereof.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

§ 53.6 Disinfection of animals.

Animals of species not susceptible to the disease for which a quarantine has been established, but which have been exposed to the disease, shall be disinfected when necessary by such methods as the Administrator shall prescribe from time to time.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

§ 53.7 Disinfection of premises, conveyances, and materials.

All premises, including barns, corals, stockyards and pens, and all cars, vessels, aircraft, and other conveyances, and the materials thereon, shall be cleaned and disinfected under supervision of an APHIS employee whenever necessary for the control and eradication of disease. Expenses incurred in connection with such cleaning and disinfection shall be shared according to

§ 53.8

the agreement reached under § 53.2 with the State in which the work is done. In the case of low pathogenic avian influenza related to the 2002 disease situations in Virginia and Texas associated with the H5 or H7 virus, premises may not be restocked with poultry until at least 7 days following such cleaning and disinfection, unless the Administrator determines that a shorter or longer period of time is adequate or necessary to protect new poultry against infection.

[68 FR 42569, July 18, 2003]

§ 53.8 Presentation of claims.

(a) Except for claims made under § 53.11, claims for the following must be presented to APHIS, through the inspector in charge, on a form approved by the Administrator:

- (1) Compensation for the value of animals;
- (2) The cost of burial, burning, or other disposition of animals;
- (3) The value of material destroyed; and
- (4) The expenses of destruction.

(b) In the case of claims made under § 53.11, claims for compensation for losses from poultry, eggs, and poultry semen destroyed or to be destroyed must be presented to APHIS, through the inspector in charge, on a form approved by the Administrator. The claim must specify the number, type, and age of the poultry; the number and type of eggs; and the type and amount of semen, as applicable.

(c) To be considered by the Department, claims made under § 53.11 must be submitted to APHIS within 90 days after December 9, 2002, or the destruction of poultry, whichever is later, except that claims made for eggs or poultry semen, and claims made for other eligible losses associated with the disease situation in Texas, must be submitted to APHIS within 90 days after July 18, 2003 or the destruction of the eggs, semen, or poultry, whichever is later.

(Approved by the Office of Management and Budget under control number 0579-0208)

[67 FR 67095, Nov. 4, 2002, as amended at 68 FR 42570, July 18, 2003]

9 CFR Ch. I (1-1-04 Edition)

§ 53.9 Mortgage against animals or materials.

When animals or materials have been destroyed pursuant to the requirements contained in this part, any claim for indemnity shall be presented on forms furnished by APHIS on which the owner of the animals or materials shall certify that the animals or materials covered thereby, are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, forms furnished by APHIS shall be signed by the owner and by each person holding a mortgage on the animals or materials, consenting to the payment of any indemnity allowed to the person specified thereon.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

§ 53.10 Claims not allowed.

(a) The Department will not allow claims arising under the terms of this part if the payee has not complied with all quarantine requirements.

(b) Expenses for the care and feeding of animals held for destruction will not be paid by the Department, unless the payment of such expense is specifically authorized or approved by the Administrator.

(c) The Department will not allow claims arising out of the destruction of animals or materials unless they shall have been appraised as prescribed in this part and the owners thereof shall have executed a written agreement to the appraisals.

(d) The Department will not allow claims arising out of the destruction of animals or materials which have been moved or handled by the owner thereof or its officer, employee, or agent, acting within the scope of his or its office, employment or agency, in violation of a law or regulation administered by the Secretary for the prevention of the introduction into or the dissemination within the United States of any communicable disease of livestock or poultry for which the animal or material was destroyed, or in violation of a law or regulation for the enforcement of which the Secretary enters or has entered into a cooperative agreement for the control and eradication of such disease.

(e) The Department will not allow claims arising out of the destruction of fish due to infectious salmon anemia (ISA) unless the claimants have agreed in writing to participate fully in the cooperative ISA control program administered by APHIS and the State of Maine. Participants in the ISA control program must:

(1) Establish and maintain a veterinary client-patient relationship with an APHIS accredited veterinarian and inform the ISA Program Veterinarian in writing of the name of their accredited veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in accredited veterinarians.

(2) Cooperate with and assist in periodic on-site disease surveillance, testing, and reporting activities for ISA, which will be conducted by their APHIS accredited veterinarian or a State or Federal official as directed by the ISA Program Veterinarian.

(3) Develop and implement biosecurity protocols for use at all participant-leased finfish sites and participant-operated vessels engaged in aquaculture operations throughout Maine. A copy of these protocols shall be submitted to the ISA Program Veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in the protocols.

(4) Develop, with the involvement of the participant's accredited veterinarian and the fish site health manager, a site-specific ISA action plan for the control and management of ISA. A copy of the action plan shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the action plan.

(5) Participate in the State of Maine's integrated pest management (IPM) program for the control of sea lice on salmonids. A copy of the management plan developed by the participant for the State IPM program shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the management plan.

(6) Submit to the ISA Program Veterinarian at the time the participant enrolls in the ISA program a complete and current fish inventory information

for each participant-leased finfish site with site and cage identifiers. Fish inventory information must include the numbers, age, date of saltwater transfer, vaccination status, and previous therapeutic history for all fish in each participant-leased finfish site.

(7) Maintain, and make available to the ISA Program Veterinarian upon request, mortality data for each participant-leased finfish site and pen in production.

(8) Cooperate with and assist APHIS in the completion of biosecurity audits at all participant-leased finfish sites and participant-operated vessels involved in salmonid aquaculture.

(Approved by the Office of Management and Budget under control number 0579-0192)

[28 FR 5935, June 13, 1963, as amended at 45 FR 86411, Dec. 31, 1980; 56 FR 51974; 67 FR 17611, Apr. 11, 2002]

§ 53.11 Payments arising from low pathogenic avian influenza; conditions for payment.

In the case of low pathogenic avian influenza related to the 2002 disease situations in Virginia and Texas associated with the H5 or H7 virus, the Administrator may pay claims, subject to available funding, as follows:

(a) *For contract growers.* The Administrator may pay a contract grower up to 100 percent of the losses identified in accordance with the LPAI compensation plan, up to the amount that the owner is eligible to receive before grower compensation is deducted.

(b) *For owners.* The Administrator, in accordance with § 53.4, may pay an owner up to 75 percent of the value of the poultry, eggs, and semen destroyed plus 75 percent of the costs of destruction and disposal of the poultry, eggs, and semen, in accordance with the LPAI compensation plan, minus the amount paid in accordance with paragraph (a) of this section to the contract grower of the poultry.

(c) *Conditions.* Payments to be made in accordance with paragraph (a) or (b) of this section are conditioned on each claimant's complying with all applicable requirements of this part and, additionally, agreeing to and complying with the specific conditions set forth in the "Avian Influenza Depopulation Agreement" regarding cleaning and

disinfection, restocking, surveillance, and other disease prevention measures.

(Approved by the Office of Management and Budget under control number 0579–0208)

[67 FR 67095, Nov. 4, 2002, as amended at 68 FR 42570, July 18, 2003]

PART 54—CONTROL OF SCRAPIE

Sec.

54.1 Definitions.

54.2 Cooperative agreements and memoranda of understanding with States.

Subpart A—Scrapie Indemnification Program

54.3 Animals eligible for indemnity payments.

54.4 Application by owners for indemnity payments.

54.5 Certification by owners.

54.6 Amount of indemnity payments.

54.7 Procedures for destruction of animals.

54.8 Requirements for flock plans and post-exposure management and monitoring plans.

54.9 Waiver of requirements for scrapie control pilot projects.

54.10 Tests for scrapie.

54.11 Approval of laboratories to run official scrapie tests and official genotype tests.

Subpart B—Scrapie Flock Certification Program

54.20 Administration.

54.21 Participation.

54.22 State scrapie certification boards.

AUTHORITY: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 66 FR 43982, Aug. 21, 2001, unless otherwise noted.

§ 54.1 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any employee of the United States Department of Agriculture authorized to act for the Administrator.

Animal. A sheep or goat.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant

Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS in animal health activities who is authorized by the Administrator to perform the function involved.

Approved laboratory. A laboratory approved by the Administrator in accordance with § 54.11 to conduct one or more scrapie tests, or genotype tests, on one or more tissues.

Approved test. A test for the diagnosis of scrapie approved by the Administrator for use in the scrapie eradication or certification program in accordance with § 54.10.

Area veterinarian in charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State concerned.

Breed association and registries. Organizations listed in § 151.9 of this chapter that maintain the permanent records of ancestry or pedigrees of animals (including the animal's sire and dam), individual identification of animals, and ownership of animals.

Certificate. An official document issued in accordance with § 79.5 of this chapter by an APHIS representative, State representative, or accredited veterinarian at the point of origin of an interstate movement of animals.

Commingle, commingled, commingling. Animals grouped together and having physical contact with each other, including contact through a fence, but not limited contacts. Commingling also includes sharing the same section in a transportation unit where there is physical contact.

Designated scrapie epidemiologist. An epidemiologist who has demonstrated the knowledge and ability to perform the functions required and who has been selected by the State animal health official and the area veterinarian in charge. The regional epidemiologist and the APHIS National Scrapie Program Coordinator must concur in the selection and appointment of the designated scrapie epidemiologist. The designated scrapie epidemiologist must satisfactorily complete training designated by APHIS.

Destroyed. (1) Euthanized by means other than slaughter, and the carcass disposed of, by means authorized by the Administrator; or

(2) In the case of exposed or high-risk animals that are not known to be infected, either euthanized or disposed of by slaughter; or

(3) Moved to a quarantined research facility if the movement has been approved by the Administrator.

Electronic implant. Any radio frequency identification implant device approved for use in the scrapie program by the Administrator. The Administrator will approve an electronic implant after determining that it is tamper resistant, not harmful to the animal, and readable by equipment available to APHIS and State representatives.

Exposed animal. (1) Any animal that has been in the same flock at the same time as a scrapie-positive female animal, excluding limited contacts; or

(2) Any animal born in a flock after a scrapie-positive animal was born into that flock or lambed in that flock, if born before that flock completes the requirements of a flock plan; or

(3) Any animal that was commingled with a scrapie-positive female animal during or up to 30 days after she lambed, kidded, or aborted, or while a visible vaginal discharge was present, or that was commingled with any other scrapie-positive female animal for 24 hours or more, including during activities such as shows and sales or while in marketing channels; or

(4) Any animal in a noncompliant flock.

Exposed flock. Any flock in which a scrapie-positive animal was born or lambed. Any flock that currently contains a female high-risk, exposed, or suspect animal, or that once contained a female high-risk, exposed, or suspect animal that lambed in the flock and from which tissues were not submitted for official testing and found negative. A flock that has completed a post-exposure management and monitoring plan following the exposure will no longer be an exposed flock.

Flock. All animals that are maintained on a single premises and all animals under common ownership or supervision on two or more premises with

animal interchange between the premises. Changes in ownership of part or all of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock. Animals maintained temporarily on a premises for activities such as shows and sales or while in marketing channels are not a flock. More than one flock may be maintained on a single premises if:

(1) The flocks are enrolled as separate flocks in the SFCP; or

(2) A State or APHIS representative determines, based upon examination of flock records, that:

(i) There is no interchange of animals between the flocks;

(ii) The flocks never commingle and are kept at least 30 feet apart at all times or are separated by a solid wall through, over, or under which fluids cannot pass and through which contact cannot occur;

(iii) The flocks have separate flock records and identification;

(iv) The flocks have separate lambing facilities, including buildings and pastures, and a pasture or building used for lambing by one flock is not used by the other flock at any time; and

(v) The flocks do not share equipment without cleaning and disinfection in accordance with § 54.7(e). Additional guidance on acceptable means of cleaning and disinfection is also available in the Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods and Rules.

Flock of origin. The flock in which an animal most recently resided in which it either was born, gave birth, or was used for breeding purposes. The determination of an animal's flock of origin may be based either on the physical presence of the animal in the flock, the presence of official identification on the animal traceable to the flock, the presence of other identification on the animal that is listed on the bill of sale, or other evidence, such as registry records.

Flock plan. A written flock management agreement signed by the owner of a flock, the accredited veterinarian, if one is employed by the owner, and a State or APHIS representative in which each participant agrees to undertake actions specified in the flock

plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock or source flock or to reduce the risk of the occurrence of scrapie in a flock that contains a high-risk or an exposed animal. As part of a flock plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the flock plan. The flock plan must include the requirements in § 54.8(a) through (f).

Flock sire. A sexually intact male animal that has ever been used for breeding in a flock.

High-risk animal. A sexually intact animal, excluding male sheep that have tested RR at codon 171 and AA at codon 136 using an official genotype test, that is:

- (1) The progeny of a scrapie-positive dam; or
- (2) Born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups; or
- (3) Born in the same flock during the same lambing season that a scrapie-positive animal was born, or during any subsequent lambing season, if born before that flock completes the requirements of a flock plan; or
- (4) An exposed female sheep that has not tested QR, HR, or RR at codon 171 using an official genotype test.

Infected flock. The flock of origin of a female animal that a State or APHIS representative has determined to be a scrapie-positive animal; or any flock in which a State or APHIS representative has determined that a scrapie-positive female animal has resided unless an epidemiologic investigation conducted by a State or APHIS representative shows that the animal did not lamb or abort in the flock. A flock will no longer be considered an infected flock after it has completed the requirements of a flock plan.

Limited contacts. Incidental contacts between animals from different flocks off the flock's premises such as at fairs, shows, exhibitions and sales; between ewes being inseminated, flushed, or implanted; or between rams at ram test or collection stations. Embryo transfer and artificial insemination equipment

and surgical tools must be sterilized between animals for these contacts to be considered limited contacts. Limited contacts do not include any contact, incidental or otherwise, with animals in the same flock or with a female animal during or up to 30 days after she lambed, kidded or aborted or when there is any visible vaginal discharge. Limited contacts do not include any activity where uninhibited contact occurs, such as sharing an enclosure, sharing a section of a transport vehicle, or residing in other flocks for breeding or other purposes. Examples of limited contacts may be found in the Scrapie Flock Certification Program standards.

Live-animal screening test. Any test for the diagnosis of scrapie in a live animal that is approved by the Administrator as usually reliable but not definitive for diagnosing scrapie, and that is conducted in a laboratory approved by the Administrator.¹

Mortgage. Any mortgage, lien, or other security or interest held by any person other than the one claiming indemnity.

National Scrapie Database. A database designated by the Administrator in which APHIS and State animal health agencies cooperatively enter data concerning scrapie outbreaks, flocks and

¹The names and addresses of laboratories approved by the Administrator to conduct live-animal screening tests will be published in the Notices Section of the FEDERAL REGISTER. A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737-1235. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: (a) Employs personnel trained by the National Veterinary Services Laboratories assigned to supervise the testing; (b) follows standard test protocols; (c) meets check test proficiency requirements; and (d) will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflicts.

premises affected by scrapie, individual animal identification and premises identification data, and other data to support the Scrapie Eradication Program and the Scrapie Flock Certification Program.

National Veterinary Services Laboratories (NVSL). The National Veterinary Services Laboratories, APHIS, U.S. Department of Agriculture, or an NVSL cooperating or contract laboratory.

Noncompliant flock. (1) Any source or infected flock whose owner declines to enter into a flock plan or post-exposure management and monitoring plan agreement within 30 days of being so designated, or whose owner is not in compliance with either agreement;

(2) Any exposed flock whose owner fails to make animals available for testing within 60 days of notification, or as mutually agreed, or whose owner fails to submit required postmortem samples;

(3) Any flock whose owner has misrepresented, or who employs a person who has misrepresented, the scrapie status of an animal or any other information on a certificate, permit, owner statement, or other official document within the last 5 years; or

(4) Any flock whose owner or manager has moved, or who employs a person who has moved, an animal in violation of this chapter within the last 5 years.

Official genotype test. Any test to determine the genotype of a live or dead animal that is conducted at either an approved laboratory or at the National Veterinary Services Laboratories, when the animal is officially identified and the samples used for the test are collected and shipped to the laboratory by either an accredited veterinarian or a State or APHIS representative

Official test. Any test for the diagnosis of scrapie in a live or dead animal that is approved by the Administrator for that use and conducted either at an approved laboratory or at the National Veterinary Services Laboratories.

Owner. A person, partnership, company, corporation, or any other legal entity who has legal or rightful title to animals, whether or not they are subject to a mortgage.

Post-exposure management and monitoring plan. A written agreement signed by the owner of a flock, any accredited veterinarian employed by the owner, and a State or APHIS representative in which each participant agrees to undertake actions specified in the agreement to monitor for the occurrence of scrapie in the flock for at least 5 years after the last high-risk or scrapie-positive animal is removed from the flock or after the last exposure of the flock to a scrapie-positive animal, unless otherwise specified by a State or APHIS representative. As part of a post-exposure management and monitoring plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the plan. The plan must include the requirements in § 54.8.

Scrapie control pilot project. A pilot project authorized by the Administrator in writing, designed to test or improve program procedures or to facilitate research, in order to control and eradicate scrapie. In addition to APHIS, participants may include State animal health agencies, flock owners, and other parties as necessary.

Scrapie Eradication Program. The cooperative State-Federal program administered by APHIS and Consistent States to control and eradicate scrapie.

Scrapie Eradication Uniform Methods and Rules (UM&R). Cooperative procedures and standards adopted by APHIS and Consistent States for controlling and eradicating scrapie. The UM&R will be reviewed at least annually by representatives of the livestock industry and appropriate State and Federal agencies and the public and will be revised, and published as needed by APHIS.

Scrapie Flock Certification Program (SFCP). The cooperative Federal-State-industry voluntary program for the control of scrapie conducted in accordance with this subpart.

Scrapie Flock Certification Program standards. Cooperative procedures and standards adopted by APHIS and State scrapie certification boards for reducing the incidence and controlling the

spread of scrapie through flock certification.²

Scrapie-positive animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part, through:

- (1) Histopathological examination of central nervous system (CNS) tissues from the animal for characteristic microscopic lesions of scrapie;
- (2) The use of proteinase-resistant protein analysis methods including but not limited to immunohistochemistry and/or western blotting on CNS and/or peripheral tissue samples from a live or a dead animal for which a given method has been approved by the Administrator for use on that tissue;
- (3) Bioassay;
- (4) Scrapie associated fibrils (SAF) detected by electron microscopy; or
- (5) Any other test method approved by the Administrator in accordance with § 54.10.³

²Individual copies of the Scrapie Flock Certification Program standards may be obtained on the World Wide Web at URL <http://www.aphis.usda.gov/vs/scrapie>, or from the Animal and Plant Health Inspection Service, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737-1235.

³The names and addresses of laboratories approved by the Administrator to conduct tests are published in the Notices Section of the FEDERAL REGISTER. A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737-1235. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: (a) Employs personnel trained by the National Veterinary Services Laboratories assigned to supervise the testing; (b) follows standard test protocols; (c) meets check test proficiency requirements; and (d) will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflict.

Separate contemporary lambing groups.

To be a separate contemporary lambing group, the group must be maintained separately such that the animals cannot come into physical contact with other lambs, kids, ewes or does or birth fluids or placenta from other ewes or does. This separate maintenance must preclude contact through a fence, during lambing and for 60 days following the date the last lamb or kid is born in a lambing season, and must preclude using the same lambing facility as other ewes or does, unless the lambing facility is cleaned and disinfected under supervision by an APHIS representative, State representative, or an accredited veterinarian between lambings in accordance with § 54.7(e). Additional guidance on acceptable means of cleaning and disinfection is also available in the Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods and Rules. The flock owner must maintain adequate records to document which animals were maintained in each contemporary lambing group and to document when cleaning and disinfection was performed and who supervised it.

Slaughter channels. Animals in slaughter channels include any animal that is sold, transferred, or moved either directly to a slaughter facility, to an individual for custom slaughter, or for feeding for the express purpose of improving the animals' condition for movement to slaughter. Any sexually intact animal that is commingled with breeding animals or that has been bred is not in slaughter channels. When selling animals for slaughter, owners should note on the bill of sale that the animals are sold only for slaughter.

Source flock. A flock in which a State or APHIS representative has determined that at least one animal was born that was diagnosed as a scrapie-positive animal at an age of 72 months or less. The determination that an animal was born in a flock will be based on such information as the presence of official identification on the animal traceable to the flock, the presence of other identification on the animal that is listed on the bill of sale, or other evidence, such as registry records, to show that a scrapie-positive animal was born

in the flock, combined with the absence of records indicating that the animal was purchased from outside and added to the flock. If DNA from the animal was previously collected by an accredited veterinarian and stored at an approved genotyping laboratory, or if DNA collection and storage are required for breed registration and the breed registration has appropriate safeguards in place to ensure the integrity of the banking process, the owner may request verification of the animal's identity based on DNA comparison if adequate records and identification have been maintained by the owner and the repository to show that the archived DNA is that of the animal that has been traced to the flock. The owner will be responsible for all costs for the DNA comparison. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

State. Each of the 50 States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all territories or possessions of the United States.

State representative. An individual employed in animal health activities by a State or a political subdivision of a State and who is authorized by the State or political subdivision to perform the function involved.

Suspect animal. An animal will be designated a suspect animal in accordance with § 79.4 of this chapter if it is:

(1) A sheep or goat that exhibits any of the following possible signs of scrapie and that has been determined to be suspicious for scrapie by an accredited veterinarian or a State or APHIS representative: Weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, or swaying of back end; increased sensitivity to noise and sudden movement; tremor, "star gazing," head pressing, recumbency, or other signs of neurological disease or chronic wasting.

(2) A sheep or goat that has tested positive for scrapie or for the proteinase resistant protein associated

with scrapie on a live-animal screening test or any other test, unless the animal is designated a scrapie-positive animal.

(3) A sheep or goat that has tested inconclusive or suggestive on an official test for scrapie.

Unofficial test. Any test for the diagnosis of scrapie or for the detection of the proteinase resistant protein associated with scrapie in a live or dead animal that either has not been approved by the Administrator or that was not conducted at an approved laboratory or at the National Veterinary Services Laboratories.

§ 54.2 Cooperative agreements and memoranda of understanding with States.

APHIS will execute cooperative agreements and/or memoranda of understanding with the animal health agency of any State in order to cooperatively administer the Scrapie Eradication Program and the Scrapie Flock Certification Program within that State. These agreements will describe the respective roles of APHIS and State personnel in implementing the Scrapie Eradication Program and the Scrapie Flock Certification Program. Each agreement may specify the financial, material, and personnel resources to be committed to these programs and other scrapie control measures by APHIS and the State; assign specific activities related to the control of scrapie within a State to APHIS or State personnel; establish schedules for APHIS representatives or State representatives to visit flocks; establish procedures for maintaining and sharing program records specified in this part, and specify other responsibilities of State representatives and APHIS representatives in support of the Scrapie Eradication Program and the Scrapie Flock Certification Program.

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Subpart A—Scrapie Indemnification Program

§ 54.3 Animals eligible for indemnity payments.

(a) Indemnity may be paid for an animal only after the owner of the animal

§ 54.4

9 CFR Ch. I (1–1–04 Edition)

has applied for indemnification and been approved in accordance with § 54.4. Indemnity may be paid only for the following:

(1) Destruction of high-risk animals;

(2) Destruction of animals based on an epidemiologic investigation, when the Administrator determines that the destruction of these animals will contribute to the eradication of scrapie;

(3) Destruction of live scrapie-positive animals;

(4) Destruction of animals that test positive on a live-animal screening test; and

(5) Destruction of suspect animals that are destroyed at the request of an APHIS representative.

(b) No indemnity will be paid for an animal if the owner of the animal fails to provide APHIS, within 30 days of request, animal registration certificates, sale and movement records, or other records requested in accordance with § 54.5. No indemnity will be paid until the premises, including all structures, holding facilities, conveyances, and materials contaminated because of occupation or use by the depopulated animals, have been properly cleaned and disinfected in accordance with § 54.7(e). Additional guidance on acceptable means of cleaning and disinfection is also available in the Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods and Rules. Premises or portions of premises may be exempted from the cleaning and disinfecting requirements if a designated scrapie epidemiologist determines, based on epidemiologic investigation, that cleaning and disinfection of such buildings, holding facilities, conveyances, or other materials on the premises will not significantly reduce the risk of the spread of scrapie, either because effective disinfection is not possible or because the normal operations on the premises prevent transmission of scrapie. No indemnity will be paid to an owner if the owner assembled or increased his flock for the purpose of collecting or increasing indemnity.

§ 54.4 Application by owners for indemnity payments.

(a) Normally, an application for indemnification will be initiated by a

State or APHIS representative who is working with the owner of a flock that has already been determined to be an infected flock or source flock, or that is already under a State movement restriction. In such cases, the flock owner will confirm information about the flock's eligibility for indemnity that is contained in the application submitted by the State or APHIS representative. However, the owner of any flock may apply directly to receive indemnification by submitting to the Administrator a written request containing the following information:

(1) Name, address, and social security number of the flock owner;

(2) Number and breed(s) of animals in the flock, including a current inventory;

(3) Location of flock premises;

(4) Reasons the owner believes animals in his or her flock may be eligible for indemnification, including any diagnosis of scrapie made for animals in the flock; any signs of scrapie observed in the flock by the owner; and any movement of animals into the flock from flocks infected with or exposed to scrapie;

(5) A copy of the registration papers issued in the name of the owner for any registered animals in the flock (registration papers are not required for the payment of indemnity for animals that are not registered). If the registration papers are unavailable, the owner may choose to accept a lesser indemnity in accordance with § 54.6(b)(2) or the area veterinarian in charge may grant a 60-day extension or the Administrator may grant an extension longer than 60 days for the presentation of registration papers; and

(6) Signed release letters addressed to any sheep or goat registry associations that maintain records of the owner's sheep or goats requesting the associations to release to APHIS all records maintained by the association on sheep or goats currently or formerly owned by the applicant.

(b) APHIS will evaluate each application to determine whether the owner's flock contains animals eligible for indemnity in accordance with § 54.3.

§ 54.5 Certification by owners.

Before any indemnity is paid to an owner, the owner must sign a written agreement with APHIS, certifying the following:

(a) The owner will make available for review upon request by a State or APHIS representative all bills of sale, pedigree registration certificates, and other records regarding movement of animals into and from the flock;

(b) If the owner maintains any flock after the payment of indemnity or acquires a new flock that is housed on the same premises within 5 years after the last high-risk or scrapie-positive animal is removed, the owner will maintain the flock in accordance with a post-exposure management and monitoring plan for 5 years;

(c) If the animal for which indemnity is paid is subject to any mortgage, the owner consents to the payment of the indemnity, up to the value of the mortgage, to the person(s) holding the mortgage;

(d) That the animal may be removed to a U.S. Department of Agriculture facility or a quarantined research facility, slaughtered, or euthanized and necropsied and tissues removed for diagnostic or other purposes.

§ 54.6 Amount of indemnity payments.

(a) Indemnity paid for sheep in accordance with § 54.3 will be set based on the following price reports published by the Agricultural Marketing Service (AMS). If pricing information is unavailable from these markets during a given week or month or if the numbers of animals sold are too low to give an accurate market value, the preceding week or month's value will be used. The AMS reports from the most recent week or month prior to the date APHIS offers to pay an owner indemnity shall be used to calculate the indemnity for that owner's sheep:

(1) The weekly weighted average Choice/Prime slaughter lamb price per pound at Greeley, CO;

(2) The weekly weighted average Utility slaughter ewe price per pound at San Angelo, TX;

(3) The monthly weighted average commercial western ewe lamb replacement price per head;

(4) The monthly weighted average commercial western yearling ewe replacement price per head;

(5) The monthly weighted average commercial western running age ewe price per head.

(6) The monthly weighted average commercial western aged ewe price per head.

(b) For animals under 1 year of age, the basic indemnity shall equal the price per pound from paragraph (a)(1) of this section times the greater of 50 lbs or the actual weight of the animal; except that, for ewe lambs under 1 year of age, the indemnity shall equal the per-head price from paragraph (a)(3) of this section if that price is higher. For sexually intact sheep 8 years of age or older and castrated animals 1 year of age or older, the basic indemnity shall equal the price per pound from paragraph (a)(2) of this section times 150, based on an average weight of 150 lbs. For sexually intact sheep at least 1 year of age and under 2 years of age, the indemnity shall equal the greater of the price per head from paragraph (a)(4) of this section, or the price per pound from paragraph (a)(2) of this section times 150, based on an average weight of 150 lbs. For sexually intact sheep at least 2 years of age and under 6 years of age, the basic indemnity shall equal the greater of the price per head from paragraph (a)(5) of this section or the price per pound from paragraph (a)(2) of this section times 150, based on an average weight of 150 lbs. For sexually intact sheep at least 6 years of age and under 8 years of age, the basic indemnity will equal the greater of the price per head from paragraph (a)(6) of this section or the price per pound from paragraph (a)(2) of this section times 150, based on an average weight of 150 lbs. A premium shall be added to the basic indemnity for each registered animal, equal to \$100 for each registered animal under 1 year of age, \$200 for each registered animal at least 1 year of age and under 4 years of age, and \$100 for each registered animal at least 4 years of age and under 8 years of age. An additional premium of \$50 will be added to the basic indemnity for each flock sire. The owner

must provide adequate records to qualify for these premiums. When the animals to be indemnified are goats, or are sheep that fall outside the classes covered previously in this paragraph, the Administrator may take into consideration the producer's purchase records and sales records for the preceding 12 to 24 months in determining the indemnity amount, but the indemnity shall not exceed the maximum indemnity calculated for registered sheep in accordance with this section.

(1) If records and identification are inadequate to determine the actual age of animals, an APHIS or State representative will count all sexually intact animals that are apparently under 1 year of age, and those that are apparently at least 1 and under 2 years of age, based on examination of their teeth, and the indemnity for these animals will be calculated. The total number of these animals will be subtracted from the total number of sexually intact animals in the group to be indemnified, and indemnity for the remainder will be calculated based on the assumption that the remainder of the flock is 80 percent aged 2 to 6 years and 20 percent aged 6 to 8 years.

(2) Any animal that is not registered at the time indemnity is first offered, but is eligible to be registered, will receive the registered animal premium reduced by \$50.

(c) For animals destroyed by slaughter, the owner will retain the salvage value (the amount paid by a slaughter plant for the animal) of the animals in lieu of receiving the base indemnity. If the salvage value, less transport costs, is less than the base indemnity, APHIS will pay the owner the difference. APHIS will also indemnify the owner in the amount of any registered animal or flock sire premiums for which the animal qualifies.

(d) If the owner disagrees with the average weight estimate, he may have the sheep weighed at a public scale at his own expense, provided that the sheep may not come in contact with other sheep or goats during movement to the public scales, and will be paid based on the actual weight times the AMS weekly average price.

(e) Indemnity will be paid to an owner only for animals actually in a

flock at the time indemnity is first offered. Animals removed from the flock as part of a post-exposure management and monitoring plan will be paid indemnity based on the AMS average prices at the time an APHIS representative designates the animals for removal.

§ 54.7 Procedures for destruction of animals.

(a) Scrapie-positive and suspect animals for which indemnification is sought must be destroyed on the premises where they are held, pastured, or penned at the time indemnity is approved or moved to an approved research facility, unless the APHIS representative involved approves in advance of destruction moving the animals to another location for destruction. Animals that are not scrapie-positive or suspect animals for which indemnification is sought may be:

(1) Slaughtered when moved in accordance with part 79 of this chapter and with the prior written approval of the APHIS representative involved;

(2) Destroyed on the premises where they are held, pastured, or penned at the time indemnity is approved;

(3) Moved to an approved research facility; or

(4) Moved to another location for destruction if an APHIS representative approves the movement in advance.

(b) The carcasses of animals destroyed in accordance with this section are authorized by the Administrator to be buried, incinerated, or disposed of by other methods in accordance with local, State, and Federal laws. The carcasses of scrapie-positive and suspect animals may not be processed for human or animal food.

(c) The destruction of animals and disposition of their carcasses in accordance with this part must be monitored by an APHIS representative who will prepare and transmit to the Administrator a report identifying the animals and showing their disposition.

(d) APHIS may pay the reasonable costs of disposal for scrapie-positive and suspect animals that are indemnified. To obtain reimbursement for disposal costs, animal owners must obtain written approval of the disposal costs from APHIS, prior to disposal.

The Administrator may also authorize payment of up to half the reasonable disposal costs for animals that are eligible to be destroyed by slaughter under this section but for which slaughter is not a practical or cost efficient means of disposal; *Provided that*, APHIS may pay more than one-half of the expenses when the Administrator determines that doing so will contribute to scrapie eradication. For reimbursement to be made, the owner of the animals must present the area veterinarian in charge with a copy of either a receipt for expenses paid or a bill for services rendered. Any bill for services rendered by the owner must not be greater than the normal fee for similar services provided by a commercial hauler or disposal facility.

(e) *Cleaning and disinfection of premises and equipment.* When required, cleaning and disinfection shall be conducted under the supervision of a State or APHIS representative as follows. Additional guidance on acceptable means of cleaning and disinfection is also available in the Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods and Rules:

(1) *Drylot areas.* When required, remove the manure and top 1-2 inches of soil to reduce contamination. Bury, till under, or compost the removed material in areas not accessed by domestic animals or wildlife.

(2) *Cement, wood, metal, and other non-earth surfaces, tools, equipment, instruments, feed, hay, bedding, and other materials.* Remove all organic material and compost or incinerate. Clean and wash all surfaces, tools, equipment, and instruments using hot water and detergent. Allow all surfaces, tools, equipment, and instruments to dry completely before disinfecting and sanitizing using the following methods:

(i) Incinerate items by high-temperature incineration methods;

(ii) Autoclave instruments, small tools, and other items at 136 °C for 1 hour;

(iii) To clean dry surfaces, apply a 2-percent chlorine bleach solution at room temperature (at least 18.3 °C for 1 hour, or apply a 1-molar solution of sodium hydroxide (approximately 5 oz. of sodium hydroxide dissolved in 1 gallon

water) at room temperature for at least 1 hour. Note: A 2-molar solution is more effective than a 1-molar solution and should be used when circumstances permit.

§ 54.8 Requirements for flock plans and post-exposure management and monitoring plans.

(a) The owner of the flock or his or her agent must identify all animals 1 year of age or over within the flock. All animals less than 1 year of age must be identified when a change of ownership occurs, with the exception of those animals under 1 year of age moving within slaughter channels that must be identified in accordance with §§ 79.2 and 79.3 of this chapter. The form of identification must be an electronic implant, flank tattoo, ear tattoo, or tamper-resistant ear tag approved for this use by APHIS. In the case of goats, the form of identification may alternatively be a tail fold tattoo. The official identification must provide a unique identification number that is applied by the owner of the flock or his or her agent and must be linked to that flock in the National Scrapie Database.

(b) Upon request by a State or APHIS representative, the owner of the flock or his or her agent must have an accredited veterinarian collect tissues from animals for scrapie diagnostic purposes and submit them to a laboratory designated by a State or APHIS representative.

(c) Upon request by a State or APHIS representative, the owner of the flock or his or her agent must make animals in the flock and the records required to be kept as a part of these plans available for inspection.

(d) The owner of the flock or his or her agent must meet requirements found necessary by a State or APHIS representative to monitor for scrapie and to prevent the recurrence of scrapie in the flock and to prevent the spread of scrapie from the flock. These other requirements may include, but are not limited to: Utilization of a live-animal screening test; restrictions on the animals that may be moved from the flock; segregated lambing; cleaning and disinfection of lambing facilities; and/or education of the owner of the flock and personnel working with the

flock in techniques to recognize clinical signs of scrapie and to control the spread of scrapie.

(e) The owner of the flock or his or her agent must immediately report the following animals to a State representative, APHIS representative, or an accredited veterinarian, and not remove them from a flock without written permission of a State or APHIS representative:

(1) Any sheep or goat exhibiting weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, swaying of back end; increased sensitivity to noise and sudden movement; tremor, “star gazing,” head pressing, recumbency, or other signs of neurological disease or chronic wasting illness; and

(2) Any sheep or goat in the flock that has tested positive for scrapie or for the proteinase resistant protein associated with scrapie on a live-animal screening test or any other test.

(f) *Requirements for flock plans only.*

(1) An epidemiologic investigation must be conducted to identify high-risk and exposed animals that currently reside in the flock or that previously resided in the flock, and all high-risk animals, scrapie-positive animals, and suspect animals must be removed from the flock. The animals must be removed either by movement to an approved research facility or by euthanization and disposal of the carcasses by burial, incineration, or other methods in accordance with local, State, and Federal laws, or, in the case of high-risk animals, by movement to slaughter in accordance with the provisions of part 79 of this chapter, or upon request in individual cases by another means determined by the Administrator to be sufficient to prevent the spread of scrapie;

(2) The premises of a flock under a flock plan must be cleaned and disinfected in accordance with § 54.7(e). Additional guidance on acceptable means of cleaning and disinfection is also available in the Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods

and Rules. Premises or portions of premises may be exempted from the cleaning and disinfecting requirements if a designated scrapie epidemiologist determines, based on epidemiologic investigation, that cleaning and disinfection of such buildings, holding facilities, conveyances, or other materials on the premises will not significantly reduce the risk of the spread of scrapie, either because effective disinfection is not possible or because the normal operations on the premises prevent transmission of scrapie. No area where a scrapie-positive animal lambled or aborted may be exempted;

(3) The owner of the flock, or his or her agent, must request breed associations and registries, livestock markets, and packers to disclose records to APHIS representatives or State representatives, to be used to identify source flocks and trace exposed animals, including high-risk animals; and

(4) The flock owner must agree to conduct post-exposure management and monitoring.

(g) *Requirements for post-exposure management and monitoring plans only:* The plan must require that a State or APHIS representative inspect the flock and flock records at least once every 12 months. The owner of the flock or his or her agent must maintain, and keep for a minimum of 5 years after an animal dies or is otherwise removed from a flock, the following records for each animal in the flock:

(1) Any identifying marks or tags present on the animal, including the animal's individual official identification number from its electronic implant, flank tattoo, ear tattoo, tamper resistant ear tag, or, in the case of goats, tail fold tattoo, and any secondary form of identification the owner of the flock may choose to maintain;

(2) Sex, year of birth, breed, and when possible to determine, the following: sire, dam, and offspring of the animal;

(3) Date of acquisition and previous flock, if the animal was not born in the flock; and

(4) Disposition of the animal, including the date and cause of death, if known, or date of removal from the

flock and name and address of the person to whom the animal was transferred.

(h) *Modification of flock plans and post-exposure management and monitoring plans.* A designated scrapie epidemiologist may modify the requirements of a flock plan or post-exposure management and monitoring plan to accommodate the situation of a particular flock if the modified plan requires:

(1) That a State or APHIS representative inspect the flock and flock records at least once every 12 months;

(2) The testing of animals at a level that will result in 99 percent confidence of detecting a 1 percent prevalence in the flock (for flock plans only);

(3) The official identification of all animals upon leaving the premises of the flock for purposes other than slaughter and of all animals over 18 months of age (as evidenced by the eruption of the second incisor) in slaughter channels; and

(4) Recordkeeping including:

(i) For acquired animals, the date of acquisition, name and address of the person from whom the animal was acquired, any identifying marks or tags present on the animal including the animal's individual official identification number from its electronic implant, flank tattoo, ear tattoo, tamper resistant ear tag, or, in the case of goats, tail fold tattoo, and any secondary form of identification the owner of the flock may choose to maintain.

(ii) For animals leaving the premises of the flock, the disposition of the animal, including, for those animals that are required to be identified, any identifying marks or tags present on the animal, including the animal's individual official identification number from its electronic implant, flank tattoo, ear tattoo, tamper resistant ear tag, or, in the case of goats, a tail fold tattoo, and any secondary form of identification the owner of the flock may choose to maintain, the date and cause of death, if known, or date of removal from the flock and name and address of the person to whom the animal was transferred.

(iii) Maintenance of these records for 5 years.

(5) Requirements equivalent to those contained in paragraphs (b), (c), (d), and (e) of this section.

(i) *Post-exposure management and monitoring plans for exposed flocks that were not source flocks and in which a scrapie infected animal did not lamb.* A designated scrapie epidemiologist shall determine the testing and monitoring requirements for these flocks based on the exposure risk of the individual flock.

§ 54.9 Waiver of requirements for scrapie control pilot projects.

The Administrator may waive the following requirements of this part for participants in a scrapie control pilot project by recording the requirements waived in the scrapie control pilot project plan:

(a) The determination that an animal is a high-risk animal, if the scrapie control pilot project plan contains testing or other procedures that indicate that an animal, despite meeting the definition of high-risk animal, is unlikely to spread scrapie; and

(b) The requirement that high-risk animals must be removed from a flock if the scrapie control pilot project plan contains alternative procedures to prevent the further spread of scrapie without removing high-risk animals from the flock.

§ 54.10 Tests for scrapie.

(a) The Administrator may approve new tests for the diagnosis of scrapie conducted on live or dead animals for use in the Scrapie Eradication Program. The Administrator will base the approval or disapproval of a test on the evaluation by APHIS and, when appropriate, outside scientists, of:

(1) A standardized test protocol that must include a description of the test, a description of the reagents, materials, and equipment used for the test, the test methodology, and any control or quality assurance procedures;

(2) Data to support reproducibility, that is, the ability to reproduce the same result repeatedly on a given sample;

(3) Data to support suitability, that is, data to show that similar results

can be produced when the test is run at other laboratories;

(4) Data to support the sensitivity and specificity of the test; and

(5) Any other data requested by the Administrator to determine the suitability of the test for program use.

(b) To be approved, a scrapie test must be able to be replicated at the National Veterinary Services Laboratories, or another reliable, timely, and cost effective method of check testing must be available to APHIS.

(c) A test or combination of tests may be approved for the identification of suspect animals, for the identification of scrapie-positive animals, or for other purposes such as flock certification. For a test to be approved for the identification of scrapie-positive animals, the test must have a specificity comparable to the specificity of the currently approved tests. For a test to be approved as a live animal screening test for the identification of suspect animals, the test must be usually reliable but need not be definitive for diagnosing scrapie.

(d) Specific guidelines for use of approved scrapie tests within the Scrapie Eradication Program or Scrapie Flock Certification Program will be added to this part as tests are approved and will also be contained in the Scrapie Eradication UM&R and the Scrapie Flock Certification Program standards based on the characteristics of the test, including specificity, sensitivity, and predictive value.

(e) If an owner elects to have an unofficial test conducted on an animal for scrapie, or for the proteinase resistant protein associated with scrapie, and that animal tests positive to such a test, the animal will be designated a suspect animal, unless:

(1) The test was run as part of a bona fide research protocol designed to evaluate an unapproved test in which the owner is not informed of the test result; or

(2) The test protocol includes appropriate measures to prevent the spread of scrapie.

§ 54.11 Approval of laboratories to run official scrapie tests and official genotype tests.

(a) State, Federal, and university laboratories, or in the case of genotype tests, private laboratories will be approved by the Administrator when he or she determines that the laboratory:

(1) Employs personnel assigned to supervise the testing who are qualified to conduct the test based on education, training, and experience and who have been trained by the National Veterinary Services Laboratories (NVSL) or who have completed equivalent training approved by NVSL;

(2) Has adequate facilities and equipment to conduct the test;

(3) Follows standard test protocols;

(4) Meets check test proficiency requirements;

(5) Meets recordkeeping requirements;

(6) Will retain records, slides, blocks, and other specimens from all cases for at least 1 year and from positive cases for 5 years;

(7) Will allow APHIS to inspect the laboratory without notice during normal business hours; and

(8) Will report all test results to State and Federal animal health officials within agreed timeframes. An inspection may include, but is not limited to, review and copying of records, examination of slides, observation of the test being conducted, and interviewing of personnel.

(b) A laboratory may request approval to conduct one or more types of scrapie test or genotype test on one or more types of tissue. To be approved, a laboratory must meet the requirements in paragraph (a) of this section for each type of test and for each type of tissue for which they request approval.

(c) The Administrator may withdraw approval of any laboratory for failure to meet any of the conditions required by paragraph (a) of this section. The Administrator shall give written notice of the proposed withdrawal to the director of the laboratory and shall give the director an opportunity to respond. If there are conflicts as to any material

fact concerning the reason for withdrawal, a hearing will be held to resolve the conflicts.

Subpart B—Scrapie Flock Certification Program

§ 54.20 Administration.

The Scrapie Flock Certification Program is a cooperative effort between APHIS; members of the sheep and goat industry, including owners of flocks, slaughtering and rendering establishments, and breed associations and registries; accredited veterinarians; and State governments. APHIS coordinates with State scrapie certification boards and State animal health agencies to encourage flock owners to certify their flocks as free of scrapie by being in continuous compliance with the Scrapie Flock Certification Program standards.

§ 54.21 Participation.

Any owner of a sheep or goat flock may apply to enter the Scrapie Flock Certification Program by sending a written request to a State scrapie certification board or to the area veterinarian in charge. A notice containing a current list of flocks participating in the Scrapie Flock Certification Program, and the certification status of each flock, may be obtained from the APHIS web site at URL <http://www.aphis.usda.gov/vs/scrapie>. A list of noncompliant flocks may also be obtained from this site, and either list may be obtained by writing to the Animal and Plant Health Inspection Service, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1235.

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§ 54.22 State scrapie certification boards.

An area veterinarian in charge, after consulting with a State representative and industry representatives, may appoint a State scrapie certification board for the purpose of coordinating activities for the Scrapie Flock Certification Program, including making decisions to admit flocks to the Scrapie Flock Certification Program and to

change flock status in accordance with the Scrapie Flock Certification Program standards. These boards are not appointed for the purpose of providing APHIS with consensus advice or policy recommendations. No more than one State scrapie certification board may be formed in each State. Each State scrapie certification board shall include as members the area veterinarian in charge, one or more State representatives, one or more accredited veterinarians, when possible, and one or more owners of flocks, and, at the discretion of the area veterinarian in charge, may include other members.

PART 55—CONTROL OF CHRONIC WASTING DISEASE

Sec.

55.1 Definitions.

Subpart A—Chronic Wasting Disease Indemnification Program

- 55.2 Payment of indemnity.
- 55.3 Appraisal and destruction of captive cervids.
- 55.4 Disinfection of premises, conveyances, and materials.
- 55.5 Presentation of claims for indemnity.
- 55.6 Mortgage against animals.
- 55.7 Claims not allowed.
- 55.8 Official CWD tests and approval of laboratories to conduct official CWD tests.

Subpart B [Reserved]

21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 67 FR 5931, Feb. 8, 2002, unless otherwise noted.

§ 55.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Animal. Any captive cervid.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS employee. Any individual employed by the Animal and Plant Health Inspection Service who is authorized

by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

Captive. Animals that are privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined space. Animals that are held for research purposes are not included.

Cervid. All members of the family Cervidae and hybrids, including deer, elk, moose, caribou, reindeer, and related species.

Chronic wasting disease, CWD. A transmissible spongiform encephalopathy of cervids.

CWD exposed animal. An animal that is part of a CWD positive herd, or that was part of a herd within 5 years prior to that herd's designation as CWD positive, or an animal that has been housed with or been in direct contact with a positive animal, or an animal that has been on a contaminated premises.

CWD positive animal. An animal that has had a diagnosis of CWD confirmed by means of an official CWD test.

CWD positive herd. A herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

CWD suspect animal. An animal for which an APHIS employee has determined that laboratory evidence or clinical signs suggest a diagnosis of CWD.

Department. The United States Department of Agriculture.

Herd. A group of animals that are:

(1) Under common ownership or supervision and are grouped on one or more parts of any single premises (lot, farm, or ranch) or

(2) All animals under common ownership or supervision on two or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.

Herd plan. A written herd management agreement developed by APHIS with input from the herd owner, State representatives, and other affected parties. A herd plan sets out the steps to be taken to eradicate CWD from a CWD positive herd, or to prevent introduction of CWD into another herd. A herd plan will require: specified means of identification for each animal in the herd; regular examination of animals

in the herd by a veterinarian for signs of disease; reporting to a State or APHIS representative of any signs of central nervous system disease in herd animals; maintaining records of the acquisition and disposition of all animals entering or leaving the herd, including the date of acquisition or removal, name and address of the person from whom the animal was acquired or to whom it was disposed, cause of death, if the animal died while in the herd. A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the particular condition of the herd and its premises, including but not limited to: specifying the time for which a premises must not contain cervids after CWD positive, exposed, or suspect animals are removed from the premises; fencing requirements; depopulation or selective culling of animals; restrictions on sharing and movement of possibly contaminated livestock equipment; cleaning and disinfection requirements, or other requirements. APHIS may review and revise a herd plan at any time in response to changes in the situation of the herd or premises or improvements in understanding of the nature of CWD epidemiology or techniques to prevent its spread.

Materials. Parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and any other articles on the premises that have been in contact with captive cervids.

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

Official appraiser (APHIS official appraiser, State official appraiser). A person authorized by APHIS (an APHIS official appraiser) or a State (a State official appraiser) to appraise animals for the purposes of this part. An official appraiser may be an APHIS employee, a State employee, or a professional livestock appraiser working under contract to APHIS or a State.

Official CWD test. Any test for the diagnosis of CWD approved by the Administrator and conducted in a laboratory approved by the Administrator in accordance with § 55.8 of this part.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Secretary. The Secretary of Agriculture of the United States, or any officer or employee of the Department delegated to act in the Secretary's stead.

State. Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

State representative. A person regularly employed in the animal health work of a State and who is authorized by that State to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Veterinarian in charge. The veterinary official of Veterinary Services, APHIS, who is assigned by the Administrator to supervise and perform official animal health work for APHIS in the State concerned.

Subpart A—Chronic Wasting Disease Indemnification Program

§ 55.2 Payment of indemnity.

The Administrator is authorized to pay for the purchase and destruction of CWD positive animals, CWD exposed animals, and CWD suspect animals. Subject to available funding, the amount of the Federal payment for any such animals will be 95 percent of the appraised value established in accordance with § 55.3 of this part, but the Federal payment shall not exceed \$3,000 per animal. If a non-Federal source makes a payment for an animal for which a Federal indemnity is paid, and the non-Federal payment exceeds 5 percent of the appraised value established in accordance with § 55.3 of this part, the amount of the Federal payment for any such animals will be reduced by the amount by which the non-Federal payment exceeds 5 percent of the appraised value. The Administrator is also authorized to reimburse State governments or State animal health agencies for payments they make for the purchase and destruction, on or after October 1, 2001, of CWD positive ani-

mals, CWD exposed animals, and CWD suspect animals, and for State expenditures for associated carcass disposal and cleaning and disinfection costs resulting from such purchase and destruction, in accordance with cooperative agreements signed by the Administrator and the duly authorized agent of the State.

§ 55.3 Appraisal and destruction of captive cervids.

(a) CWD positive herds, or individual CWD suspect animals or exposed animals removed by APHIS from a herd for testing, will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either a State official appraiser or an APHIS official appraiser alone.

(b) The appraisal of cervids will be the fair market value as determined by the meat or breeding value of the animals. Animals may be appraised in groups, provided that where appraisal is by the head, each animal in the group is the same value per head, and where appraisal is by the pound, each animal in the group is the same value per pound.

(c) Appraisals of cervids must be reported on forms furnished by APHIS and signed by the appraisers, and signed by the owner of the cervids to indicate agreement with the appraisal amount. Reports of appraisals must show the number of cervids and the value per head or the weight and value by pound.

(d) In accordance with instructions from an APHIS employee, cervids for which indemnification is sought must be:

- (1) Destroyed on the premises where they are held, pastured, or penned at the time indemnity is approved;
- (2) Moved to another location for destruction under conditions specified by the APHIS employee; or
- (3) Moved to an approved research facility under conditions specified by the APHIS employee.

(e) The carcasses of any cervids destroyed in accordance with this part are authorized by the Administrator to

§ 55.4

be incinerated, destroyed in an alkaline hydrolysis tissue digester, or disposed of by any other method authorized by an APHIS employee and in accordance with local, State, and Federal laws. APHIS will pay the reasonable costs of destruction and carcass disposal for animals that are indemnified. To obtain reimbursement for disposal costs, animal owners must obtain written approval of the disposal costs from APHIS, prior to disposal. Except in cases where APHIS or a State directly arranges for disposal, the owner of the animals must present an APHIS employee with a written contract or estimate of disposal costs. Prior to receiving reimbursement, the owner must also present an APHIS employee with a copy of either a receipt for expenses paid by the owner or a bill for services rendered to the owner. Any bill for services rendered presented by the owner must not be greater than the normal fee for similar services provided by commercial entities. The carcasses of cervids destroyed in accordance with this section may not be sold to be processed for human or animal food, including dietary supplements.

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§ 55.4 Disinfection of premises, conveyances, and materials.

After cervids are destroyed in accordance with this part, all premises, including barns, stockyards and pens, all cars and other conveyances, and all other materials on any premises or conveyances used to house or transport such cervids must be cleaned and disinfected under the supervision of an APHIS employee or a State representative, using methods specified by the APHIS employee or a State representative. Premises may not be restocked with cervids until after the date specified in the herd plan required by § 55.7(b) of this part. The owner to whom the indemnity is paid will be responsible for expenses incurred in connection with the cleaning and disinfection, except that APHIS or a State will pay for cleaning and disinfection of the conveyances used to transport the cervids to the location of disposal. However, APHIS may also decide to pay the cost of cleaning and dis-

9 CFR Ch. I (1-1-04 Edition)

infecting premises when the procedures needed to conduct effective cleaning and disinfection are unusually extensive and require methods that are not normally available on a premises. For example, normal procedures would include washing surfaces with high-pressure hoses and disinfectants and burying or burning contaminated materials. Unusually extensive procedures would include disposing of contaminated materials by digestive disposal or high-temperature incineration.

§ 55.5 Presentation of claims for indemnity.

Claims for indemnity for the value of animals destroyed must be documented on a form furnished by APHIS and presented to an APHIS employee or a State representative authorized to accept the claims.

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§ 55.6 Mortgage against animals.

When cervids have been destroyed under this part, any claim for indemnity must be presented on forms furnished by APHIS. The owner of the cervids must certify on the forms that the cervids covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the cervids must sign, consenting to the payment of indemnity to the person specified on the form.

(Approved by the Office of Management and Budget under control number 0579-0189)

§ 55.7 Claims not allowed.

(a) The Department will not allow claims arising out of the destruction of cervids unless the cervids have been appraised as prescribed in this part and the owners have signed the appraisal form indicating agreement with the appraisal amount as required by § 55.3(c) of this part.

(b) The Department will not allow claims arising out of the destruction of cervids unless the owners have signed a written agreement with APHIS in which they agree that if they maintain cervids in the future on the premises used for cervids for which indemnity is

paid, they will maintain the cervids in accordance with a herd plan and will not introduce cervids onto the premises until after the date specified in that herd plan. Persons who violate this written agreement may be subject to civil and criminal penalties.

(c) The Department will not allow claims arising out of the destruction of cervids that have been moved or handled by the owner or a representative of the owner in violation of a law or regulation administered by the Secretary regarding animal disease, or in violation of a law or regulation for which the Secretary has entered into a cooperative agreement.

(Approved by the Office of Management and Budget under control number 0579-0189)

§ 55.8 Official CWD tests and approval of laboratories to conduct official CWD tests.

(a) An official CWD test is:

(1) Histopathological examination of central nervous system (CNS) tissues from the animal for characteristic microscopic lesions of CWD, using test protocols provided by the National Veterinary Services Laboratories (NVSL);

(2) The use of proteinase-resistant protein analysis methods including but not limited to immunohistochemistry and/or western blotting on CNS and/or peripheral tissue samples from a live or a dead animal, using test protocols provided by NVSL; or

(3) Any other test method approved by the Administrator in accordance with this section.

(b) The Administrator may approve new tests for the diagnosis of CWD conducted on live or dead animals, and will base the approval or disapproval of a test on the evaluation by APHIS and, when appropriate, outside scientists, of:

(1) A standardized test protocol that must include a description of the test, a description of the reagents, mate-

rials, and equipment used for the test, the test methodology, and any control or quality assurance procedures;

(2) Data to support reproducibility, that is, the ability to reproduce the same result repeatedly on a given sample;

(3) Data to support suitability, that is, data to show that similar results can be produced when the test is run at other laboratories;

(4) Data to support the sensitivity and specificity of the test; and

(5) Any other data requested by the Administrator to determine the suitability of the test for program use.

(c) Specific protocols for official CWD tests are available upon request to NVSL.

(d) State, Federal, and university laboratories will be approved by the Administrator to conduct official CWD tests when he or she determines that the laboratory:

(1) Employs personnel assigned to supervise the testing who are qualified to conduct the test based on education, training, and experience and who have been trained by NVSL or who have completed equivalent training approved by NVSL;

(2) Has adequate facilities and equipment to conduct the test;

(3) Follows standard test protocols;

(4) Meets check test proficiency requirements;

(5) Meets recordkeeping requirements;

(6) Will retain records, slides, blocks, and other specimens from all cases for at least 1 year and from positive cases for 5 years;

(7) Will allow APHIS to inspect¹ the laboratory without notice during normal business hours; and

¹ An inspection may include, but is not limited to, review and copying of records, examination of slides, observation of the test being conducted, and interviewing of personnel.

§ 55.8

(8) Will report all test results to State and Federal animal health officials within agreed timeframes.

(e) The Administrator may withdraw approval of any laboratory for failure to meet any of the conditions required by paragraph (d) of this section. The Administrator shall give written notice of the proposed withdrawal to the director of the laboratory and shall give the director an opportunity to respond.

9 CFR Ch. I (1–1–04 Edition)

If there are conflicts as to any material fact concerning the reason for withdrawal, a hearing will be held to resolve the conflicts. The hearing will be conducted in accordance with rules of practice that will be adopted by the Administrator for the proceeding.

Subpart B [Reserved]

PART 56 [RESERVED]